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**IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF CALIFORNIA**

----- X

**TROVE BRANDS, LLC D/B/A THE  
BLENDERBOTTLE COMPANY**

*Plaintiff,*

**Case No: 2:22-cv-02222-TLN-CKD,**

*v.*

**TRRS MAGNATE LLC D/B/A HYDRA CUP,**

*Defendant.*

----- X

**DEFENDANT HYDRA CUP’S OPENING CLAIM CONSTRUCTION BRIEF**

COMES NOW, Defendant TRRS Magnate LLC d/b/a Hydra Cup (“Hydra Cup”), by and through counsel, submits its Opening Claim Construction Brief for U.S. Patent No. D510,235 (the “D235 Patent”), U.S. Patent No. D696,551 (the “D551 Patent”), and U.S. Patent No. D697,798 (the “D798 Patent”) (collectively the “Asserted Patents”) in this patent infringement action filed against Hydra Cup by Plaintiff Trove Brands, LLC d/b/a the BlenderBottle Company (“BlenderBottle”).

The Asserted Patents cover designs for shaker bottles and lids used for mixing, drinking, pouring, storing, and transporting various contents. Notwithstanding that the designs for the bottles and lids being used by Hydra Cup that BlenderBottle accuses of infringing the Asserted Patents have been available to consumers in the United States before BlenderBottle filed its patent applications and that proof of which was provided to BlenderBottle, each of BlenderBottle’s Asserted Patents’ claims is dictated by function. Hydra Cup respectfully requests limiting the scope of the design patents to non-functional features as well as features not claimed by prior art. As explained more fully below, the court should adopt Hydra Cup’s proposed constructions in full.

**TABLE OF CONTENTS**

1 TABLE OF AUTHORITIES

2  
3 FACTS

- 4 - A. Nature and Stage of the Proceedings.
- 5 - B. The Asserted Patents and Accused Products.
- 6 • 1. *The D551 Patent.*
- 7 - a. Practicing Products.
- 8 - b. Accused Products.
- 9 • 2. *The D235 Patent.*
- 10 - a. Practicing Products.
- 11 - b. Accused Products.
- 12 • 3. *The D798 Patent.*
- 13 - a. Practicing Products.
- 14 - b. Accused Products.

16 LEGAL STANDARD

- 17 - I. DESIGN PATENT CLAIM CONSTRUCTION IS A MULTI-STEP PROCESS.
- 18 • A. Intrinsic Evidence.
- 19 - 1. Claims.
- 20 - 2. Specification.
- 21 - 3. Prosecution History.
- 22 • B. Extrinsic Evidence.
- 23 - II. CLAIM CONSTRUCTION’S ROLE IN DESIGN PATENT INFRINGEMENT
- 24 SUITS: THE MODIFIED ORDINARY OBSERVER TEST.
- 25 • A. Relics of the Point-of-Novelty Test Persist in the Modern
- 26 Modified Ordinary Observer Test.
- 27 - 1. *Claim Construction Includes Functionality Screening to*
- 28 *Identify the Non-Functional Aspects of the Design.*
- 29 • a. Functional Screening Aligns with the Fundamental
- 30 Goal of Claim Interpretation, Does Not Alter the
- 31 Fundamentals of Design Patent Infringement
- 32 Analysis, and Aligns With the Principles of Patent
- 33 Public Policy.

- *2. Claim Construction Includes Analyzing the Designs in the Context of Prior Art.*
- *3. Verbal Descriptions are Allowed in Design Patent Claim Construction.*
- *4. Claim Construction by Written Description is Proper.*

## ARGUMENT

- I. THIS COURT SHOULD ADOPT HYDRA CUP'S PROPOSED CONSTRUCTION FOR THE 'D551 PATENT'S CLAIM BECAUSE IT FOLLOWS FEDERAL CIRCUIT PRECEDENT.
  - A. Hydra Cup's Proposed Construction of the 'D551 Patent's Claim.
  - B. The Scope of the 'D551 Patent's Claim is Limited by the Functional Elements of the Design and the Functional Purpose of the Design as a Whole.
    - *1. The Overall Design of the Lid Design Covered by the 'D551 Patent is Dictated by Function.*
    - *2. Each Design Element of the 'D551 Patent is Dictated by Function.*
      - a. The Lid's Domed-Body Design Covered by the 'D551 Patent Represents the Best Design for Optimal Functionality.
      - b. The Lid's Circular-Screw-Top-Base Design Covered by the 'D551 Patent Represents the Best Design for Optimal Functionality.
      - c. The Lid's Brackets Design Covered by the 'D551 Patent Represents the Best Design for Optimal Functionality.
      - c. The Lid's Flip-Top-Cap Design Covered by the 'D551 Patent Represents the Best Design for Optimal Functionality.
      - d. The Lid's Spout and Spout-Guard Designs Covered by the 'D551 Patent Represents the Best Designs for Optimal Functionality.

- 1                                   • e. The Lid's Carry-Loop Design Covered by the 'D551
- 2                                   Patent Represents the Best Design for Optimal
- 3                                   Functionality.
- 4       - II. THIS COURT SHOULD ADOPT HYDRA CUP'S PROPOSED CLAIM
- 5       CONSTRUCTION FOR THE 'D235 PATENT BECAUSE IT FOLLOWS FEDERAL
- 6       CIRCUIT PRECEDENT.
- 7                   • A. Hydra Cup's Proposed Claim Construction for the 'D235 Patent.
- 8                   • B. The Scope of the 'D235 Patent's Claim is Limited by the Overall
- 9                   Functional Purpose of the Design Dictated by its Overall
- 10                  Functionality and Each Individual Functional Design Element
- 11                  Compromising the Overall Design.
- 12                       - 1. *The Overall Design of the BlenderBottle D235 Patent is*
- 13                       *Primarily Dictated by Function.*
- 14                       - 2. *Each Design Element Comprising the Overall Design*
- 15                       *Covered by the 'D235 Patent is Dictated by Function.*
- 16                           • a. The Bottle-Body Design Covered by the 'D235
- 17                           Patent Represents the Best Design for Optimal
- 18                           Functionality.
- 19                           • b. The Ribbed-Grip-Bottle-Sides Design Covered by
- 20                           the 'D235 Patent Represents the Best Design for
- 21                           Optimal Functionality.
- 22                           • c. The Measurement-Markings-Tool Design Covered
- 23                           by the 'D235 Patent Represents the Best Design for
- 24                           Optimal Functionality.
- 25                           • d. The Bottle-Screw-Top-Head Design Covered by the
- 26                           'D235 Patent Represents the Best Design for Optimal
- 27                           Functionality.
- 28                           • e. *The Bottle-Bottom Design Covered by the 'D235*
- 29                           *Patent Represents the Best Design for Optimal*
- 30                           *Functionality.*
- 31                           • f. *The Bottle-Lid Design Covered by the 'D235 Patent*
- 32                           *Represents the Best Design for Optimal Functionality.*
- 33       - III. THIS COURT SHOULD ADOPT HYDRA CUP'S PROPOSED CLAIM
- 34       CONSTRUCTION FOR THE 'D798 PATENT BECAUSE IT FOLLOWS FEDERAL
- 35       CIRCUIT PRECEDENT.

- 1           • A. Hydra Cup's Proposed Construction of the 'D798 Patent's
- 2           Claim.
- 3           • B. The Scope of the 'D798 Patent's Claim is Limited by the
- 4           Functional Elements of the Design and the Functional Purpose of
- 5           the Design as a Whole.
- 6                 - 1. *The Overall Design of the 'D798 Patent is Dictated by*
- 7                 *Function.*
- 8                 - 2. *Each Individual Element in BlenderBottle's D798 Patent*
- 9                 *is Dictated by Function.*
- 10                         • a. The Container-Bottle-Body Covered by the 'D798
- 11                         Patent Represents the Best Design for Optimal
- 12                         Functionality.
- 13                         • b. The Container-Measurement-Markings-Tool is
- 14                         Primarily Functional.
- 15         - IV. DOZENS OF UTILITY PATENTS DESCRIBE THE FUNCTIONALITY OF THE
- 16         DESIGNS CLAIMED BY THE ASSERTED PATENTS.
- 17         - V. THE SCOPE OF THE ASSERTED PATENTS' CLAIMS IS LIMITED BY DESIGN
- 18         PATENT PRIOR ART.
- 19           • A. Design Patent Prior Art.
- 20           • B. The Accused Products Were Designed Based on Similar Designs
- 21           Disclosed by Other Patents and Therefore the Asserted Patents'
- 22           Claims Should be Narrowly Construed in the Context of the Prior
- 23           Art and Infringement Allegations.
- 24                 - 1. *The Accused Products Were Designed Based on the D029*
- 25                 *and D047 Patents.*
- 26                         • b. The Accused Products Modeled After the 'D047
- 27                         Patent Do Not Infringe the 'D551 Patent.
- 28                         • b. The Accused Products Modeled After the 'D029
- 29                         Patent Do Not Infringe BlenderBottle's D798 Patent.
- 30           • C. The Accused Products are More Substantially Similar to
- 31           Designs Disclosed by Other Patents that Cited the Asserted
- 32           Patents as Prior Art.
- 33                 - c. The Accused Products are More Substantially Similar to
- 34                 the 'D107 Patent than to the Asserted Patents.

- d. The Accused Products that are More Substantially  
Similar to the 'D348 Patent than to the Asserted Patents  
are Not Infringing the Asserted Patents.

## CONCLUSION

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- 2 *Hupp v. Siroflex of America, Inc.*, 122 F.3d 1456 (Fed. Cir. 1997)
- 3 *In re Harvey*, 12 F.3d 1061 (Fed. Cir. 1993)
- 4 *In re Mann*, 861 F.2d 1581 (Fed. Cir. 1988)
- 5 *Inpro II Licensing, S.A.R.L. v. T-Mobile USA, Inc.*, 450 F.3d 1350, 1354-55 (Fed. Cir.
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- 8 *Lanard Toys Ltd. v. Dolgencorp LLC*, 958 F.3d 1337 (Fed. Cir. 2020)
- 9 *Lanard Toys Ltd. v. Dolgencorp LLC*, 2019 WL 1304290 (M.D. Fla. Mar. 21, 2019)
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- 12 *Marine Polymer Techs., Inc. v. Hemcon, Inc.*, 672 F.3d 1350 (Fed. Cir. 2012)
- 13 *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996)
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- 15 *Minka Lighting, Inc. v. Pan Air Elec. Co.*, 93 Fed. Appx. 214 (Fed. Cir. 2004)
- 16 *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120 (2014)
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- 19 (Fed. Cir. 1998)
- 20 *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005)
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2 *Read Corp. v. Portec, Inc.*, 970 F.2d 816 (Fed. Cir. 1992)  
3 *Retractable Techs., Inc. v. Becton, Dickinson & Co.*, 653 F.3d 1296 (Fed. Cir. 2011)  
4 *Richardson v. Stanley Works, Inc.*, 597 F.3d 1288 (Fed. Cir. 2010)  
5 *Sega Enterprises Ltd. v. Accolade, Inc.*, 977 F.2d 1510 (9th Cir. 1992)  
6 *Seiko Epson Corp. v. Nu-Kote Intern., Inc.*, 190 F.3d 1360, 1368, 52 U.S.P.Q.2d  
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10 *W.Y. Industries, Inc. v. Kari-Out Club LLC*, 2011 WL 3841106 (D.N.J. 2011)

11 **Statutes**

12 5 U.S.C. § 302 35 U.S.C. § 171

13 **Regulations**

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15 37 C.F.R. § 1.153 MPEP § 1501

16 MPEP § 1503

17 MPEP § 1504

18

**FACTS**

**A. Nature and Stage of the Proceedings.**

Hydra Cup submits its proposed claim constructions for the claims of the Asserted Patents for this Court’s consideration and adoption.

BlenderBottle filed its Complaint on 14 December 2023 and an Amended Complaint on 03 March 2023, asserting that Hydra Cup infringes the Asserted Patents as well as similar trade dresses. (Pls. Amend. Compl. (ECF No. 19)). Hydra Cup filed its Answer and Counterclaims on 13 February 2023 and its Amended Answer and Counterclaims on 17 March 2023. (*See* Defs. Amend. Answer (ECF No. 21)).

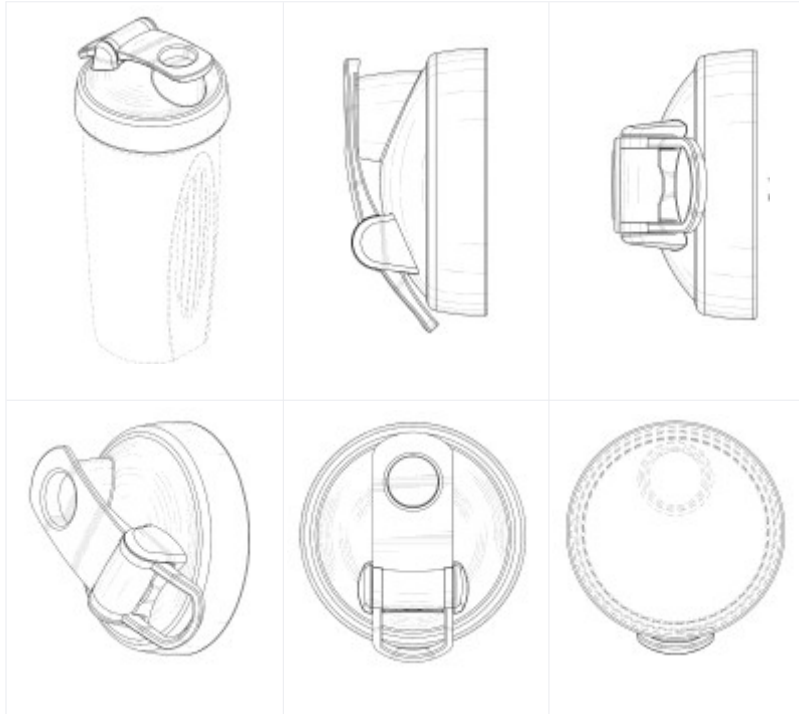
The parties submitted their Fed. R. Civ. P. 26(f) report and discovery plan on 25 April 2023. (*See* Joint Rule 26(f) Report (ECF No. 23)). The Court considered the parties’ Joint Rule 26(f) Report and issued its Scheduling Order on 10 May 2023, setting the briefing schedule for claim construction to begin on 30 November 2023. (*See* Scheduling Order (ECF No. 29)).

**B. The Asserted Patents and Accused Products.**

***1. The D551 Patent.***

The USPTO issued the U.S. Patent No. D696,551, titled “Bottle Lid Having Integrated Handle” on 31 December 2013, based on an application filed on 07

1 September 2012. BlenderBottle asserts against Hydra Cup the sole claim of the  
2 'D551 Patent: "the ornamental design for a bottle lid with an integrated handle, as  
3 shown and described." 'D551 Patent. This claim is described by six drawings:



4 *Id.* at figs. 1-6.

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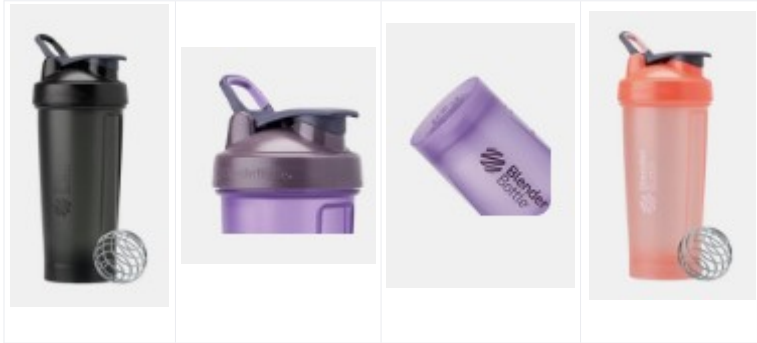
7 **a. Practicing Products.**

8 BlenderBottle contends the following lids, shown below, embody the 'D551

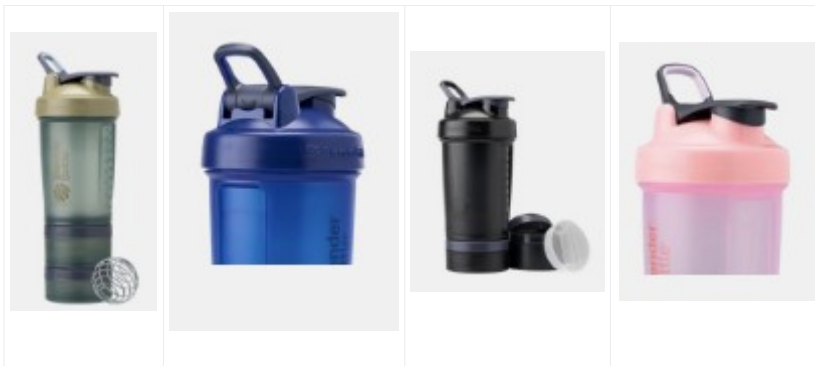
9 Patent: BlenderBottle Classic, BlenderBottle Classic Replacement Lid,

1 BlenderBottle ProStak, and BlenderBottle ProStak Replacement Lid. (*See* Ex. 3,  
2 Pls. Answers to Defs. Interrogs., No. 7, at 17.).

3 **BlenderBottle Classic and Classic Replacement Lid**



4 **BlenderBottle ProStak and ProStak Replacement Lid**



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7 **b. Accused Products.**

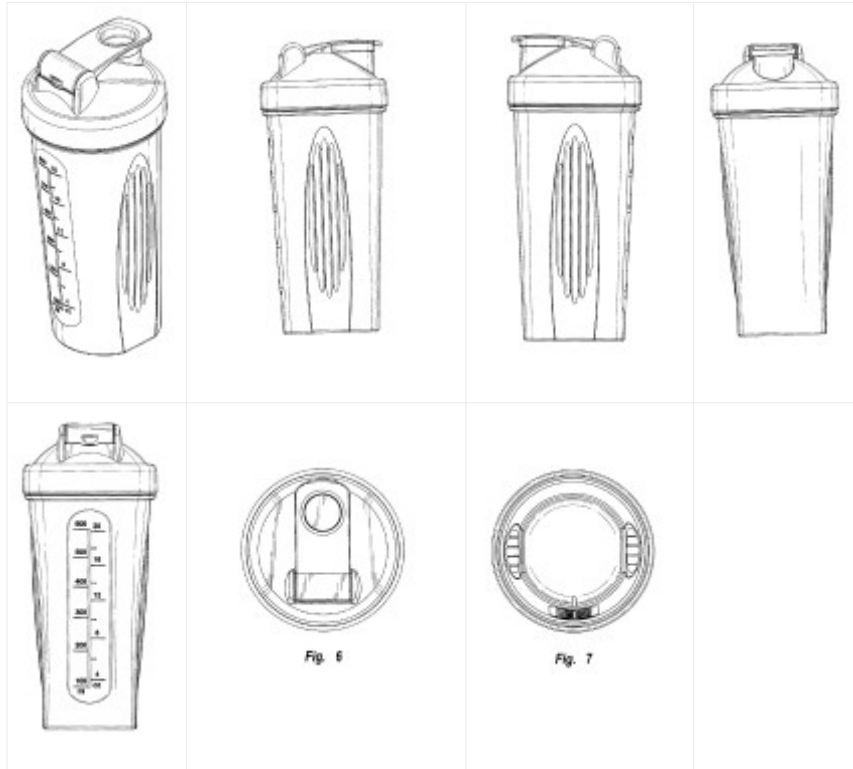
8 BlenderBottle accused the following Hydra Cup lids of infringing the 'D551

9 Patent:



1    **2. The D235 Patent.**

2            The USPTO issued U.S. Patent No. D510,235 on 04 October 2005, based on  
3    an application filed on 09 September 2003. BlenderBottle asserts against Hydra  
4    Cup the sole claim of the 'D235 Patent: "The ornamental design for a bottle, as  
5    shown and described." 'D235 Patent. This claim is described by seven drawings:

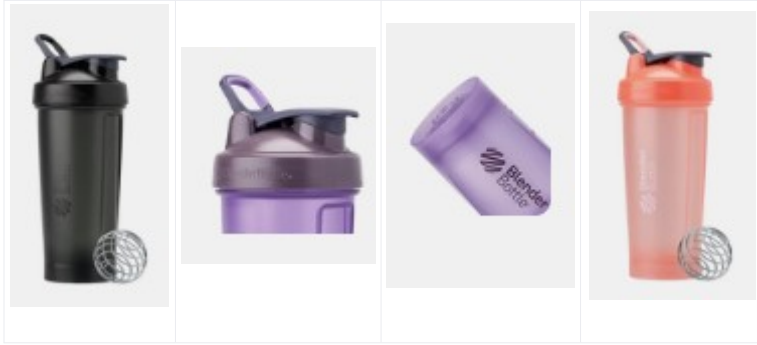


1 *Id.* at figs. 1-7.

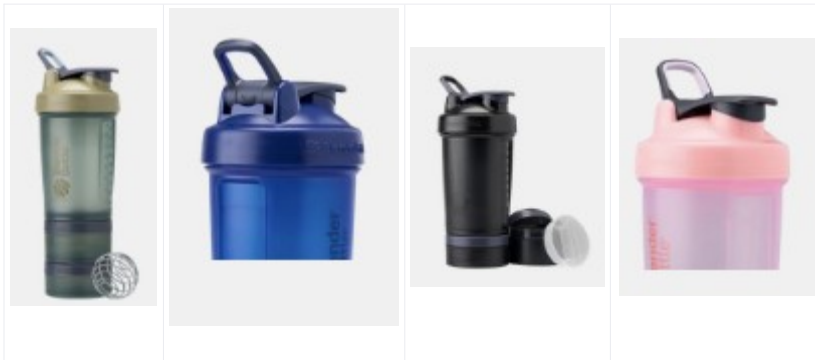
2 **a. Practicing Products.**

3 BlenderBottle contends its Classic Shaker Bottle and its BlenderBottle  
4 ProStak Replacement Lid, shown below, embody the 'D235 Patent. (See Ex. 3, Pls.  
5 Answers to Defs. Interrogs., No. 7, at 16.).

6 **BlenderBottle Classic and Classic Replacement Lid**



1 **BlenderBottle ProStak and ProStak Replacement Lid**



2 **b. Accused Products.**

3       BlenderBottle accused the following Hydra Cup shaker bottles and lids of  
4   infringing the 'D235 Patent:

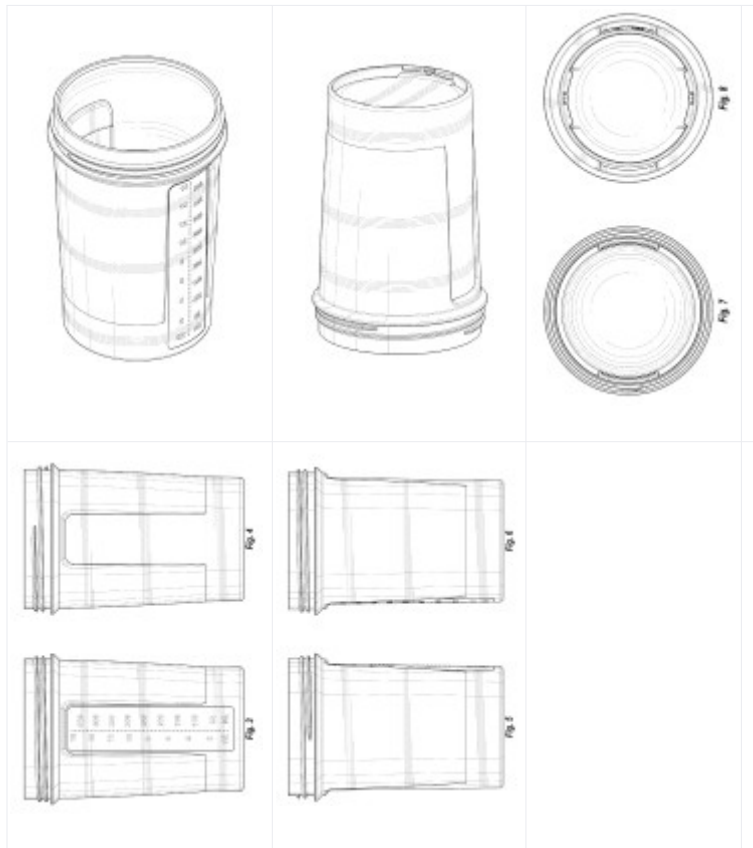
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**3. The D798 Patent.**

The USPTO issued U.S. Patent No. D697,798, titled “Container,” on 21 January 2014, based on an application filed on 06 June 2013. BlenderBottle asserts against Hydra Cup the sole claim of the ’D798 Patent: “The ornamental design for a container, as shown and described.” ‘D798 Patent. This claim is described by eight drawings:



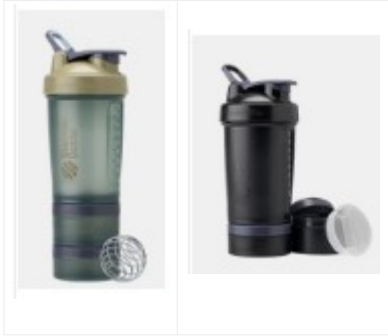
1 *Id.* at figs. 1-8.

2 **a. Practicing Products.**

3 BlenderBottle contends its BlenderBottle ProStak and its BlenderBottle  
4 ProStak Replacement Cup shown below embody the 'D798 Patent. (*See* Ex. 3, Pls.  
5 Answers to Defs. Interrogs., No. 7, at 16.).

6 **BlenderBottle ProStak and ProStak Replacement Cup**

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1 **b. Accused Products.**

2 BlenderBottle accused the following Hydra Cup shaker storage container  
3 bottles of infringing the 'D798 Patent, which Hydra Cup also accused of infringing  
4 the 'D235 Patent:

5 **Hydra Cup's Products Accused of Infringing the 'D798 Patent.**



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## LEGAL STANDARD

### I. DESIGN PATENT CLAIM CONSTRUCTION IS A MULTI-STEP PROCESS.

Claim construction is the first step in evaluating patent infringement.<sup>1</sup> *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 391 (1996); *Anheuser-Busch v. Crown Cork & Seal Techs.*, 121 Fed. Appx. 388, 392 (Fed. Cir. 2004). Design patent claim construction involves an interpretation of the scope of protection as a matter of law. *Bernhardt, L.L.C. v. Collezione Europa USA, Inc.*, 386 F.3d 1371, 1376 (Fed. Cir. 2004). Following the Supreme Court's decision in *Markman*, the Federal Circuit held that proper claim construction requires a review of the patent's intrinsic evidence and extrinsic evidence. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1317 (Fed. Cir. 2005) (en banc)).<sup>2</sup> Courts must review this evidence in the context of the following three claim construction principles: (1) claims are given their ordinary meaning to a person skilled in the art at the invention time;<sup>3</sup> (2) interpretations should align with what was actually invented and the inventor's intent;<sup>4</sup> (3) courts

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<sup>1</sup> The second step is to compare the accused device to the patent claim. *See Gorham Company v. White*, 81 U.S. 511, 528 (1871); *Crocs, Inc. v. International Trade Commission*, 598 F.3d 1294, 1303-04 (Fed. Cir. 2010); *Egyptian Goddess*, 543 F.3d at 672-76.

<sup>2</sup> The ITC follows these same claim construction rules in Section 337 proceedings involving patent infringement. *See Alloc, Inc. v. Int'l Trade Com'n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003); 19 U.S.C. § 1337.

<sup>3</sup> *Phillips*, 415 F.3d at 1313-14

<sup>4</sup> *Renishaw PLC v. Marposs Societa'per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998)

1 strive to maintain claims' validity, adhering closely to the patent's language and  
2 specifications.<sup>5</sup>

3 This means courts must give each disputed claim for each Asserted Patent  
4 the meaning it would have to a person of ordinary skill in the art at the time of the  
5 invention. *See Phillips*, 415 F.3d at 1313. The courts must begin "th[is] decision-  
6 making process by reviewing . . . the patent specification and prosecution history."  
7 *Id.* at 1313. In construing design patents, courts consider both intrinsic and  
8 extrinsic evidence with a particular emphasis on the patent's drawings and detailed  
9 specifications. *Markman*, 52 F.3d at 979.

#### 10 **A. Intrinsic Evidence.**

11 Intrinsic evidence includes the claims, the specification, and the prosecution  
12 history. *Phillips*, 415 F.3d at 1314-17. Reviewing the disputed claim terms in light  
13 of the intrinsic evidence is necessary because a person of ordinary skill in the art  
14 ("POSITA") at the time of the invention is deemed to read the claim term in the  
15 context of: (1) the particular claim in which the disputed term appears in a way that  
16 makes sense in light of the overall claim language; and (2) the entire patent,  
17 including the specification. *Id.* at 1313. As design patents typically are claimed as  
18 shown in drawings, without any written description, the court's claim construction  
19 must be adapted accordingly. *See Goodyear T. R. v. Hercules T. R. Co.*, 162 F.3d  
20 1113, 116 (Fed. Cir. 1998) (citing 37 C.F.R. § 1.153(a)); 37 C.F.R. § 1.153(a).

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1 <sup>5</sup> *See Marine Polymer Techs., Inc. v. Hemcon, Inc.*, 672 F.3d 1350, 1368 (Fed. Cir. 2012).

1 **1. Claims.**

2 Patent claim terms are generally given their ordinary and customary  
 3 meaning, which is the meaning they would have to a POSITA. *Phillips*, 415 F.3d at  
 4 1313-14. Although the majority of the material for construing a design patent will  
 5 come from the drawings of the design patent, other intrinsic evidence may, in some  
 6 cases, provide relevant evidence for construing a design patent.<sup>6</sup>

7 **2. Specification.**

8 The specification plays a crucial role in interpreting claims and is often  
 9 decisive when its description of the invention aligns closely with the proposed claim  
 10 interpretation. *Phillips*, 415 F.3d at 1316. Specifically, the specification helps in  
 11 claim construction by outlining the preferred or only embodiment of the invention,  
 12 distinguishing it from prior art, or by defining specific terms. *See id.* at 1313-15.  
 13 Yet, it's important to balance interpreting claims based on the specification without  
 14 wrongly limiting the claims to the embodiments described in it or deviating from

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1 <sup>6</sup> For example, the title of the design can have relevance to construing the claimed design. *See, e.g.,*  
 2 *Application of Zahn*, 617 F.2d 261, 263, 204 U.S.P.Q. 988 (C.C.P.A. 1980) (title of design patent  
 3 “Shank of Drill Bit” would be taken together with the description of the figures to construe the  
 4 claimed design to be limited to only the shank of the drill bit and not the including the cutting  
 5 portion). *See also* 37 C.F.R. § 1.153(a) (“The title of the design must designate the particular article.  
 6 No description, other than a reference to the drawing, is ordinarily required.” In design patents, the  
 7 features shown by solid lines are claimed, while the features shown as broken lines are not claimed.  
 8 37 C.F.R. § 1.152 (“Design Drawings”); *Contessa Food Prods, Inc. v. Conagra*, 282 F.3d 1370, 1378  
 9 (Fed. Cir. 2002). In a design patent, all of the claimed ornamental features (those shown in solid  
 10 lines) must be considered, because “[a] patented design is defined by the drawings in the patent, not  
 11 just by one feature of the claimed design.” *Id.* at 1378.).

1 the invention as presented in the specification. *Retractable Techs., Inc. v. Becton,*  
2 *Dickinson & Co.*, 653 F.3d 1296, 1305 (Fed. Cir. 2011).

3 Additionally, the specification's differentiation of the invention from prior art  
4 and its listed advantages can guide the court in ensuring that claims reflect these  
5 distinct aspects. *Inpro II Licensing, S.A.R.L. v. T-Mobile USA, Inc.*, 450 F.3d 1350,  
6 1354-55 (Fed. Cir. 2006).<sup>7</sup>

### 7 **3. Prosecution History.**

8 The prosecution history of a design patent may be relevant in construing the  
9 scope of the claimed design. *Goodyear Tire*, 162 F.3d at 1116 (prosecution history  
10 did not limit claimed design of tire tread to truck tires, but ordinary observer could  
11 be limited to truck purchaser as a factual matter and not one of claim construction)  
12 (abrogated by *Egyptian Goddess*, 543 F.3d at 672-76.). The prosecution history can  
13 provide helpful information in determining proper claim scope, as the patentee may  
14 have disclaimed certain claim interpretations during prosecution to overcome prior  
15 art, which the courts should take into account when construing the claim terms  
16 *Typhoon Touch Techs., Inc. v. Dell, Inc.*, 659 F.3d 1376, 1381 (Fed. Cir. 2011).

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1 <sup>7</sup> For instance, if the specification highlights the absence of components in the invention that are  
2 present in prior art, claims may be interpreted to exclude those components. *See id.*; *see Phillips*, 415  
3 F.3d at 1316-19.

**B. Extrinsic Evidence.**

Courts may include extrinsic evidence in their considerations, such as expert testimony which provides insights into how those with technical expertise would interpret patent claims. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1308-10 (Fed. Cir. 1999). It's often appropriate and even recommended for courts to use reliable extrinsic evidence. *Markman*, 52 F.3d at 979; *see also Pitney Bowes*, 182 F.3d at 1309 (finding (“[e]xtrinsic evidence consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises.”). This approach helps ensure that the interpretation of patent claims aligns with the clearly understood and commonly accepted concepts in the relevant technical field. *See Pitney Bowes*, 182 F.3d at 1309-10. That said, courts also caution that this type of evidence should primarily serve as background information and aid in understanding the relevant technology. It should not be the sole basis for claim construction decisions. *See W.Y. Industries, Inc. v. Kari-Out Club LLC*, 2011 WL 3841106, at \*5 (D.N.J. 2011).

**II. CLAIM CONSTRUCTION’S ROLE IN DESIGN PATENT INFRINGEMENT SUITS: THE MODIFIED ORDINARY OBSERVER TEST.**

Although the Federal Circuit’s rulings over the last two decades have shifted the focus in design patent infringement tests to the ordinary observer test, it is a modified ordinary observer test, integrating elements of the previous points-of-novelty test into the ordinary observer test, emphasizing the importance of



1 understanding the differences between the claimed design and prior art. Courts  
2 have also consistently highlighted the need to distinguish between functional and  
3 non-functional elements in design patents, with the aim being to protect only the  
4 ornamental, non-functional aspects. Consequently, design patent claims should be  
5 construed narrowly by employing functional screening and contextual analysis  
6 within the framework of prior art and infringement allegations. This approach is in  
7 line with the overarching principles of patent law, aiming to protect the aesthetic  
8 aspects of a design while ensuring functional elements are not unduly monopolized.

9 **A. Relics of the Point-of-Novelty Test Persist in the Modern Modified**  
10 **Ordinary Observer Test.**

11 Over a century ago, the Supreme Court established that design patent  
12 infringement occurs when, to an ordinary observer paying typical purchaser  
13 attention, two designs appear substantially similar to the extent that one could be  
14 mistaken for the other to induce the ordinary observer to purchase one supposing it  
15 to be the other. *Gorham*, 81 U.S. at 528. Since then, the ordinary observer test has  
16 evolved. *See, e.g., Egyptian Goddess Inc.*, 543 F.3d at 674 (noting “[s]ubsequent  
17 cases applied that principle, interpreting the ordinary observer test of *Gorham* to  
18 require that the perspective of the ordinary observer be informed by a comparison of  
19 the patented design and the accused design in light of the prior art, so as to enable  
20 the fact-finder to determine whether the accused design had appropriated the  
21 inventiveness of the patented design.”).

1 In *Egyptian Goddess*, the Federal Circuit changed design patent claim  
2 construction in three ways: first, the Federal Circuit overturned the points-of-  
3 novelty test, and, instead, it held the Supreme Court’s ordinary observer test as the  
4 exclusive criterion for assessing design patent infringement; second, it cautioned  
5 against offering detailed descriptions of design patent claims, warning of potential  
6 biases towards certain features and the risk of losing focus on the design as a whole;  
7 third, and important here, the Federal Circuit offered some directions on the  
8 application of prior art in both claim interpretation and the “ordinary observer” test.  
9 See *id.* at 672-76 (“We think, however, that *Litton* and the predecessor cases on  
10 which it relied are more properly read as applying a version of the ordinary  
11 observer test in which the ordinary observer is deemed to view the differences  
12 between the patented design and the accused product in the context of the prior  
13 art.”).

14 Thus, in *Egyptian Goddess*, the Federal Circuit abolished the points-of-  
15 novelty test, holding the ordinary observer test, in modified form, should be the only  
16 test for design patent infringement. *Id.* at 674-76. And the modified form of the  
17 ordinary observer test requires considering whether “an ordinary observer, *familiar*  
18 *with the prior art designs*, would be deceived into believing the accused products are  
19 the same as the patented design.” See *Crocs, Inc. v. International Trade Comm’n*,  
20 598 F.3d 1294 (Fed. Cir. 2010) (citing *Egyptian Goddess*, 543 F.3d at 675-76.). This  
21 means relics of the points-of-novelty test, namely functional filtering and the prior

1 art consideration, live on in the modified ordinary observer test. *See id.* This means  
2 design patent claim construction includes both functional screening and construing  
3 the designs in the context of the prior art. *See id.*

4 ***1. Claim Construction Includes Functionality Screening to Identify the Non-***  
5 ***Functional Aspects of the Design.***

6 Design patents are intended to protect the ornamental, non-functional  
7 aspects of a product, as outlined. 35 U.S.C. § 171; *Auto. Body Parts Ass’n v. Ford*  
8 *Glob. Techs., LLC*, 930 F.3d 1314, 1318 (Fed. Cir. 2019). Courts have continually  
9 emphasized the necessity of distinguishing non-functional elements in a design  
10 patent claim. *See, e.g., OddzOn Prods.*, 122 F.3d at 1405 (“Where a design contains  
11 both functional and non-functional elements, the scope of the claim must be  
12 construed in order to identify the nonfunctional aspects of the design as shown in  
13 the patent.”); *see also Richardson v. Stanley Works, Inc.*, 597 F.3d 1288, 1293 (Fed.  
14 Cir. 2010) (stating that the district court properly factored out the functional  
15 features of the plaintiff’s design as part of its claim construction). This distinction is  
16 crucial since a design eligible for patent protection must be primarily ornamental  
17 and not dictated by functional considerations. *See Ethicon Endo-Surgery, Inc. v.*  
18 *Covidien, Inc.*, 796 F.3d 1312, 1328 (Fed. Cir. 2015).

19 The Federal Circuit has clarified that in design patent litigation, claim  
20 construction involves identifying and separating the functional aspects of a design.  
21 *See Lanard Toys Ltd. v. Dolgencorp LLC*, 958 F.3d 1337, 1342-44 (Fed. Cir. 2020)

1 (finding “the district court followed our claim construction directives to a tee”  
2 because “in an effort to clarify the scope of the protected subject matter, the court  
3 identified the functional features of the [patented pencil] design”). In construing the  
4 claims of design patents, after first considering the drawings in the  
5 specification, courts should next consider the “various features of the claimed design  
6 as they relate to the accused design and the prior art. *Id.* at 1342.

7 Although the Federal Circuit has not provided a definitive test for  
8 determining if a design is dictated by function, it has identified certain factors to  
9 assist in that determination: (1) the presence of non-functional elements; (2) the  
10 uniqueness of the design; (3) whether the design represents the best design; (4) the  
11 impact of alternative designs on the article’s utility; (5) touting with a promotional  
12 emphasis on utility features; and (6) coverage by utility patents. *See Auto. Body*  
13 *Parts Ass’n*, 930 F.3d at 1319; *Sport Dimension, Inc. v. Coleman Co., Inc.*, 820 F.3d  
14 1316, 1320-22 (Fed. Cir. 2016).

15 Moreover, the Federal Circuit has highlighted that the potential for alternate  
16 design methods and consumer appeal of a design do not inherently make a design  
17 functional. *Auto. Body Parts Ass’n*, 930 F.3d at 1314. A design is considered  
18 functional if it is essential to the use or purpose of the article. *Seiko Epson Corp. v.*  
19 *Nu-Kote Intern., Inc.*, 190 F.3d 1360, 1368, 52 U.S.P.Q.2d (BNA) 1011 (Fed. Cir.  
20 1999); *Avia Group Intern., Inc. v. L.A. Gear California, Inc.*, 853 F.2d 1557, 1563, 7

U.S.P.Q.2d (BNA) 1548 (Fed. Cir. 1988). A design that is essential to the operation or use of an article, therefore, cannot be the subject of a valid design patent. *Best Lock Corp. v. Ilco Unican Corp.*, 94 F.3d 1563, 1566, 40 U.S.P.Q.2d (BNA) 1048 (Fed. Cir. 1996).

While ornamental designs are challenging to describe verbally, claim construction can still aid in guiding the evaluation of a design's scope, particularly in differentiating between ornamental and functional features.<sup>8</sup> See *Egyptian Goddess*, 543 F.3d at 679-680 (noting a detailed verbal claim constructions increase “the risk of placing undue emphasis on particular features of the design and the risk that a finder of fact will focus on each individual described feature in the verbal description rather than on the design as a whole.”). This approach is crucial in ensuring that design patents adhere to their intended purpose of protecting the aesthetic, non-functional aspects of a product.

**a. Functional Screening Aligns with the Fundamental Goal of Claim Interpretation, Does Not Alter the Fundamentals of Design Patent Infringement Analysis, and Aligns With the Principles of Patent Public Policy.**

Functional screening in design patent claims is consistent with the core objectives of claim construction, paralleling the principles applied in utility patents. As established in *Markman* and later elaborated on by other cases, the clarity of

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<sup>8</sup> Courts frequently rely on claim constructions, for example, to assist the fact finder in “distinguishing between those features of the claimed design that are ornamental and those that are purely functional.” *Egyptian Goddess*, 543 F.3d at 674-679 (citing *OddzOn Prods., Inc. v. Just Toys, Inc.*, 122 F.3d 1396, 1405 (Fed. Cir. 1997)).

1 patent documentation is crucial. 517 U.S. at 373 (quoting *McClain v. Ortmyer*, 141  
2 U.S. 419, 424 (1901)). This clarity is particularly vital in design patents, where the  
3 distinction between ornamental and functional elements can be blurred. *See id.* at  
4 375. Accurate claim construction in design patents, therefore, serves to interpret  
5 ambiguous documentation and delineate the boundary between what is protected  
6 and what remains in the public domain. *See id.* at 374-77.

7 And functional screening does not alter the basic principles of design patent  
8 infringement analysis. Despite criticisms following *Markman* and *Elmer* decisions,<sup>9</sup>  
9 the focus remains on protecting only non-functional, ornamental aspects of a design,  
10 as previously underscored by the Federal Circuit. *See Keystone Retaining Wall*  
11 *Systems v. Westrock*, 997 F.2d 1444, 1450 (Fed. Cir. 1993); *Lee v. Dayton-Hudson*  
12 *Corp.*, 838 F.2d 1186, 1188 (Fed. Cir. 1988) (“design patent is limited to  
13 ornamentation . . . [d]esign patents do not and cannot include claims to the  
14 structural or functional aspects of the article.”). The approach of comparing the  
15 accused design with the verbalized claim, rather than the actual design, aims not to  
16 restrict the scope of design patents but to ensure that similarities due to  
17 unprotected functional aspects do not lead to erroneous findings of infringement.

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1 <sup>9</sup> *See, e.g.*, Perry Saidman, The Crisis in the Law of Designs, 89 J. PAT. & TRADEMARK OFF.  
2 SOC'Y 301, 327 (2007).

1 Cases like *Read*,<sup>10</sup> *Lee*,<sup>11</sup> and *OddzOn*<sup>12</sup> illustrate that this method does not  
2 introduce a literal infringement test but rather refines the understanding of what is  
3 legally protected, upholding the long-standing principle that functional elements  
4 are not covered by design patents.

5 Distinguishing between functional and ornamental aspects in design patents  
6 aligns with public policy goals that emphasize clear demarcations between different  
7 forms of intellectual property. *See Bonito Boats v. Thunder Craft Boats*, 489 U.S.  
8 141, 146 (1989) (quoting U.S. Const., Art. I., §8, cl. 8); *see also Sega Enterprises*  
9 *Ltd. v. Accolade, Inc.*, 977 F.2d 1510, 1526-27 (9th Cir. 1992). This distinction is  
10 crucial to maintain a balance between encouraging innovation and preventing  
11 overreach that could hinder scientific and artistic progress. By employing claim  
12 construction to differentiate between functional and ornamental aspects, the scope  
13 of design patent protection is kept within appropriate bounds, avoiding the removal  
14 of concepts from the public domain without the rigorous examination required for  
15 utility patents. *See In re Mann*, 861 F.2d 1581, 1582 (Fed. Cir. 1988); *Minka*  
16 *Lighting, Inc. v. Pan Air Elec. Co.*, 93 Fed. Appx. 214, 216 (Fed. Cir. 2004) (noting  
17 “design patent scope is severely limited”). This approach, endorsed by the Federal  
18 Circuit, is essential for an innovation-driven economy, ensuring that design patents  
19 fulfill their intended purpose without encroaching on functional elements.

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1 <sup>10</sup> *Read Corp. v. Portec, Inc.*, 970 F.2d 816 (Fed. Cir. 1992).

2 <sup>11</sup> *Lee*, 838 F.2d 1186.

3 <sup>12</sup> *OddzOn*, 122 F.3d 1405.

**2. Claim Construction Includes Analyzing the Designs in the Context of Prior Art.**

The Asserted Patents’ claims should be narrowly construed in the context of prior art and infringement allegations.

In *Egyptian Goddess*, the Federal Circuit expressly emphasized that the differences between the claimed design and the prior art remain relevant, but instead of being considered as part of a separate test, the differences will now be incorporated into the ordinary observer test. 543 F.3d at 680. Accordingly, this Court should “point out various features of the claimed design as they relate to . . . the prior art.” *Lanard Toys*, 958 F.3d at 1342 (internal quotation and citation omitted).<sup>13</sup> The *Lanard* district court, for example, considered prior art references, both cited by the examiner and identified by the defendant, in its claim construction analysis, and recognized “the overall appearance of [plaintiff’s] design [wa]s distinct from th[e] prior art only in the precise proportions of its various elements in relation to each other, the size and ornamentation of [one design element], and the particular size and shape of [another design element].” *Lanard Toys Ltd. v. Dolgencorp LLC*, 2019 WL 1304290, at \*12 (M.D. Fla. Mar. 21, 2019). And the Federal Circuit in *Lanard* noted, “as a matter of claim construction, the district court undoubtedly considered the points of novelty of the patented design over the prior art,” and “s[aw] no error in the district court’s approach to claim construction.”

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<sup>13</sup> See also *Egyptian Goddess*, 543 F.3d at 680 (“point out . . . various features of the claimed design as they relate to . . . the prior art”).



1 958 F.3d at 1342-1344 (emphases added) (the district court “construed the claim  
2 consistent with the drawings and pointed out the ornamental and functional  
3 features of the design as well as the various features as they relate to the prior art”  
4 *before* it “proceeded to the question of infringement”). Indeed, the scope of a design  
5 patent claim must be viewed in the context of the prior art because design patents  
6 only protect “new” and “original” designs. *See* 35 U.S.C. § 171 (a).

7 ***3. Verbal Descriptions are Allowed in Design Patent Claim Construction.***

8       There is no law forbidding verbal descriptions of design patent drawings. The  
9 Federal Circuit in *Egyptian Goddess*, highlighted the discretion of district courts in  
10 determining the detail level in such descriptions and noted the court’s decision to  
11 provide a detailed verbal description won’t be considered an error unless it results  
12 in prejudice. *Egyptian Goddess*, 543 F.3d 665, 679-80 (Fed. Cir. 2008) (en banc)  
13 (emphasis added). In *Egyptian Goddess*, for instance, the district court’s detailed  
14 verbal description of the claimed design was found accurate and non-prejudicial. *See*  
15 *Egyptian Goddess, Inc. v. Swisa, Inc.*, Civil Action No. 3:03-CV0594-N (N.D.Tex.  
16 Mar. 4, 2005). Moreover, the Federal Circuit acknowledged that the effort put into  
17 creating a verbal description might not always proportionately contribute to case  
18 analysis. *Egyptian Goddess*, 543 F.3d at 679-80.

1 In some instances, preparing a verbal claim construction is even  
2 recommended. *See id.* at 680.<sup>14</sup> Addressing issues like the role of design patent  
3 drafting conventions, the impact of prosecution history, and differentiating  
4 ornamental from functional features can be crucial. *Id.* (finding such crucial areas  
5 include “describing the role of particular conventions in design patent drafting . . .  
6 assessing and describing the effect of any representations that may have been made  
7 in the course of the prosecution history . . . and distinguishing between those  
8 features of the claimed design that are ornamental and those that are purely  
9 functional.”)

10 When a design includes both functional and ornamental elements, the court  
11 may need to verbally distinguish these aspects.<sup>15</sup> As seen in *OddzOn* and  
12 *Richardson*, courts must delineate non-functional elements within a design,  
13 especially when functional elements are present. *OddzOn Products, Inc. v. Just*  
14 *Toys, Inc.*, 122 F.3d 1396, 1405 (Fed. Cir. 1997) (finding “[w]here a design contains  
15 both functional and non-functional elements, the scope of the claim must be  
16 construed in order to identify the non-functional aspects of the design as shown in  
17 the patent.”); *David A. Richardson v. Stanley Works, Inc.*, 597 F.3d 1288, 1294 (Fed.  
18 Cir. 2010). The analysis in *Richardson* underscores that simply relying on drawings

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1 <sup>14</sup> For example, a court might need to clarify design patent drawing conventions, such as the  
2 interpretation of broken lines. *Id.*

3 <sup>15</sup> *See supra* Section III.A.1.

without verbal description may not suffice, particularly when identifying functional components of a design. *See Richardson*, 597 F.3d at 1294.<sup>16</sup>

**4. Claim Construction by Written Description is Proper.**

Although a design patent is not required to have any written description,<sup>17</sup>, when a description is present, it can modify the scope of the claim in ways somewhat more direct than is possible in a utility patent (short of providing definitions for utility patent claim terms). *Id.* In fact, it is not unusual for a design patent claim to recite “[t]he ornamental design for [article of manufacture], as shown and described” as set forth in the present patents. *Id.*

There are several reasons a written description can be advantageous. First, a written description can make clear that certain sets of drawings relate to separate embodiments, effectively allowing for different scopes of the lone claim. *See* MPEP § 1504.05 (“The specification should make clear that multiple embodiments are disclosed and should particularize the differences between the embodiments.”). Second, within these embodiments, the specification can make clear that certain

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<sup>16</sup> stating “*Richardson* fails to explain how a court could effectively construe design claims, where necessary, in a way other than by describing the features shown in the drawings. *Richardson*’s proposition that the claim construction should comprise nothing more than the drawings is simply another way of arguing that the court erred by identifying the functional elements of the patented article, and is therefore unavailing. We find no error in the court’s claim construction.”. *Richardson*, 597 F.3d at 1294.

<sup>17</sup> *See* 37 C.F.R. § 1.153(a) (“No description, other than a reference to the drawing, is ordinarily required.”); *Hupp v. Siroflex of America, Inc.*, 122 F.3d 1456, 1464 (Fed. Cir. 1997) (“A design patent contains no written description; the drawings are the claims to the patented subject matter.”); Manual of Patent Examining Procedure (MPEP) § 1503.01.11

embodiments are dependent on the disclosure of other embodiments. *See* MPEP § 1504.05. Third, a written description can describe the views taken on by the drawings, to avoid confusion as to the relationship between drawings. *See* MPEP § 1503.01.11. Examiners may, in fact, require such descriptions, including specification of the angle of a particular view. A written description in a design patent application can also provide material that claims or disclaims portions of the design not shown in the figures, to provide antecedent basis for later amendments during prosecution. *See* MPEP § 1503.01. Accordingly, the construction of written descriptions in design patents is valid.

Thus, to summarize: claim construction for design patents must include a comprehensive assessment of functionality, contextual understanding through prior art, and the allowance of verbal and written descriptions of the claims. Functionality screening is imperative to identify and separate the ornamental aspects from the functional ones, adhering to the legislative intent of design patents. This process ensures that the patent protection is limited to non-functional, aesthetic elements, aligning with the principle that functionality should not be monopolized through design patents. Furthermore, the interpretation of design claims must consider the context of prior art to define the scope of novelty and originality. This approach aligns with the Federal Circuit's guidelines, ensuring that the claimed design is distinct from pre-existing designs and that the patent does not overreach into the realm of common or functional designs. Lastly, the

1 inclusion of verbal and written descriptions in claim construction is crucial. These  
2 descriptions provide clarity and context to the visual representations, particularly  
3 in distinguishing between ornamental and functional aspects of a design. The  
4 Federal Circuit acknowledges the importance of detailed verbal descriptions in  
5 aiding the understanding of complex design elements and ensuring a  
6 comprehensive evaluation of the patent claims.

7

## ARGUMENT

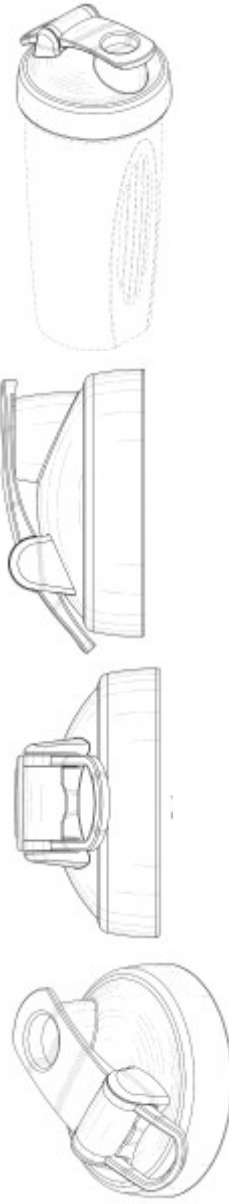
Considering the principles of claim construction outlined above,<sup>18</sup> Hydra Cup respectfully requests limiting the scope of the Asserted Patents to designs not dictated by function and to designs not previously disclosed by prior art. Hydra Cup therefore submits its proposed claim constructions for the claims of the Asserted Patents and its reasoning justifying such constructions for this Court's consideration and adoption.

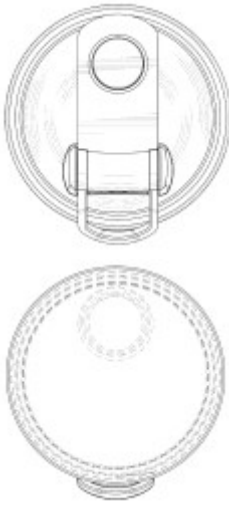
### **I. THIS COURT SHOULD ADOPT HYDRA CUP'S PROPOSED CONSTRUCTION FOR THE 'D551 PATENT'S CLAIM BECAUSE IT FOLLOWS FEDERAL CIRCUIT PRECEDENT.**

#### **A. Hydra Cup's Proposed Construction of the 'D551 Patent's Claim.**

<b>D551 Patent's Claim</b>	<b>Hydra Cup's Proposed Construction</b>
The ornamental design for a bottle lid with an integrated handle, as shown and described.	The ornamental design for a bottle lid with an integrated handle, as shown and described, with an overall design that is primarily dictated by functioning as a drinking, mixing, pouring, storing, and transporting article, with each individual design element primarily dictated by function as follows: (1) the lid's <b>Domed-Body</b> serves as a sturdy base for the other design elements and is designed and shaped primarily for functional reasons related to the optimal drinking, mixing,

<sup>18</sup> See *supra* LAW, Sections I-III..

D551 Patent's Claim	Hydra Cup's Proposed Construction
	<p>pouring, storing, and transporting of solid and liquid consumables; (2) the lid's <b>Screw-Top-Base</b> securely seals the lid to the shaker bottle, thereby enabling the lid to integrate with the shaker bottle to provide an overall useful article; (3) the lid's <b>Brackets</b> serve a functional role in attaching or securing the Carry-Loop and the Flip-Top-Cap to the lid; (4) the lid's <b>Flip-Top-Cap</b> is functionally designed for sealing and opening the Spout in a quick, easily accessible manner; (5) the lid's <b>Spout</b> and <b>Spout-Guard</b> are primarily designed for functional utility in filtering and allowing precision passage of liquid and promoting hygiene; and (6) the lids <b>Carry-Loop</b> is functionally purposed for ease of carrying and flexibility in attaching to external objects.</p> <p>And both the overall functional design and each functional element are recognized as being dictated primarily by their functional nature, and, therefore, the Claim disclaims any ornamental design protection over these elements insofar as their design is dictated by function.</p> <p>The Claim also acknowledges the existence of a wide array of prior art in the field of bottle lids with substantially similar designs. As such, the scope of protection sought is limited, focusing only on the unique, non-functional, and ornamental aspects of the design that distinctly set it apart from prior art.</p>

<b>D551 Patent's Claim</b>	<b>Hydra Cup's Proposed Construction</b>
	

**B. The Scope of the 'D551 Patent's Claim is Limited by the Functional Elements of the Design and the Functional Purpose of the Design as a Whole.**

BlenderBottle's D551 Patent's design for a shaker bottle lid is a prime example of a design dictated by function on multiple levels. Not only is the overall design of the 'D551 Patent dictated by function, but every single design element comprising the lid design—i.e., the lid's Domed-Body, its Spout, its Flip-Top-Cap, its Spout-Guard, its Brackets, and its Carry-Loop—was crafted and optimized to fulfill specific functional needs in the best way possible, meaning the lid design is predominantly dictated by function at all design levels.



**1. The Overall Design of the Lid Design Covered by the 'D551 Patent is Dictated by Function.**

The overall design of the lid design covered by the 'D551 Patent is primarily dictated by function, focused on enhancing the lid design's overall practical uses.<sup>19</sup> At the highest level of functionality, the 'D551 Patent's lid design combines with BlenderBottle's various shaker bottle products to provide a functional utility for drinking, mixing, pouring, storing, and transporting various dry and liquid consumables.<sup>20</sup> Thus, the 'D551 Patent's lid design is not just a standalone feature; it works in tandem with the bottle to enhance its overall functionality and is an integral component that plays a crucial role in BlenderBottle's shaker bottle's functionality as a versatile, portable beverage container. This symbiotic relationship indicates that the lid's design is dictated by the need to complement and augment the bottle's utility.

Furthermore, the overall design of the lid, including its functional elements, is integral to its unique drinking and mixing functions. It ensures that when the

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<sup>19</sup> BlenderBottle's utility patent for the exact same lid design that the 'D551 Patent covers describes the functional elements of the lid design. US 8,695,830, Detailed Description (filed 2012-09-11) ("This configuration facilitates the storage and handling of a container having lid. . . . Such bottles 107 can be used to store, carry, and/or mix ingredients of a beverage or other food product.").

<sup>20</sup> (See Ex. 10, Screenshot of BlenderBottle Touting Many Uses (March 2012) (showing its shaker being used to mix and pour salad dressing, pancake batter, and eggs and touting the bottle's functional use as a "food storage" container)); see also US 3,820,692, Abstract (filed 1973-04-16) (explaining a shaker bottle lid serves at least four functions: "The closure member 12 for vessel 10 and as seen in FIGS. 1-3, 5 and 7 has a four-fold function: namely as a removable, seal-tight closure for vessel or tumbler 10, secondly, as a capacity booster therefor; thirdly as an auxiliary feed mouth and dispensing spout for the vessel when the closure member 12 is in seal-tight engagement therewith; and fourthly to retain the blending element 14 in a substantially fixed position in the assembly.") (emphasis added).

1 bottle is shaken, the contents are mixed efficiently, without leakage, which is a key  
2 selling point of a shaker bottle. Thus, it is important to highlight the 'D551 Patent's  
3 lid design contribution to consuming and pouring functions as well as its role as a  
4 functional secondary sealing mechanism. The lid's primary function is to ensure a  
5 leak-proof seal. The threaded design along with the secure flip cap ensures that the  
6 contents of the bottle remain inside, even when shaken vigorously. This is crucial  
7 for a product designed to mix beverages.

8       Along similar lines the 'D551 Patent's lid design was designed to allow for  
9 optimal ease of opening and closing. And its size and shape are dictated by the need  
10 for a comfortable drinking experience while also being compatible with the internal  
11 dimensions of the bottle for effective mixing. The user-friendly design of the lid,  
12 with its grooved sides, allows for easy gripping and manipulation. This is  
13 particularly important for users who may be handling the bottle with wet or  
14 slippery hands. Furthermore, the 'D551 Patent's lid design allows user's to quickly  
15 seal and unseal the lid without removing the entire lid, allows users to mix the  
16 contents of the bottle without any risk of spillage or leakage, and allows optimal  
17 drinking and pouring with minimal spillage. The lid also functions a mobile  
18 drinking, mixing, storing, and pouring article, allowing users portability through  
19 easy transporting of said article. The lid's comprehensive design, including its  
20 robustness and leak-proof nature, makes the bottle suitable for storage and  
21 transportation of liquids. And the choice of materials and the construction of the lid

1 are focused on durability and safety, ensuring that the lid withstands repeated use,  
2 cleaning, and the stress of being used in a dynamic environment. The design  
3 ensures that the bottle can be safely stored in various positions, carried in a bag, or  
4 transported without the risk of leakage, which is essential for a portable beverage  
5 container.

6 While the lid may have minimal ornamental aspects, its form is dictated by  
7 the functional demands of a versatile beverage container. There are only so many  
8 ways to provide so much functionality in a single article. BlenderBottle's 'D551  
9 Patent's lid design prioritizes practically, indicating a function-first approach,  
10 aiming to provide a convenient, durable, and effective solution for drinking, mixing,  
11 pouring, storing, and transporting various contents, which is further evidenced by  
12 each of the 'D551 Patent's design elements being dictated by function.

13 ***2. Each Design Element of the 'D551 Patent is Dictated by Function.***

14 Examining the purpose and utility of each of the 'D551 Patent's elements  
15 shows that each element of the overall design is dictated by function. The functional  
16 nature of each element in the lid design in the 'D551 Patent is further substantiated  
17 and clearly articulated by its description in multiple utility patents predating the  
18 'D551 Patent. And both Plaintiff and consumers have continually touted the 'D551  
19 Patent's functionality over the years. This design, far from being merely aesthetic,  
20 combines features for enhanced utility and effectiveness, including structural

1 integrity, ease of use, and portability. Each element serves a specific, practical  
 2 purpose, such as mixing, drinking, pouring, storing, locking and sealing—both by  
 3 lid and by cap—carrying, attaching, and portability. The design’s functionality is  
 4 further supported by a wide array of prior art invalidating any claim of it being  
 5 purely ornamental.

6 **a. The Lid’s Domed-Body Design Covered by the ’D551 Patent Represents**  
 7 **the Best Design for Optimal Functionality.**

8 The design of the lid’s Domed-Body lacks elements that are purely  
 9 ornamental. Its dome, concave shape and construction are dictated by the need to  
 10 enhance mixing, ensure structural integrity, and provide ergonomic benefits. There  
 11 are no aspects of the Domed-Body’s design that serve solely decorative purposes.

12 More specifically, the concave, domed shape lid is a deliberate design choice  
 13 that significantly improves structural integrity,<sup>21</sup> crucial for lids and bottles used in  
 14 vigorous shaking and mixing. This design not only enhances the lid’s durability but  
 15 also offers several functional advantages, including distributing forces evenly across  
 16 the lid and reducing the risk of deformation under stress—a key factor for products  
 17 used in dynamic environments like gyms. The Domed-Body lid design significantly  
 18 improves the mixing capability, a core function of a shaker bottle. Its dome shape

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1 <sup>21</sup> BlenderBottle’s utility patent, the 830 Patent, for the exact same lid design further describes the  
 2 functional benefits provided by using certain composite materials over others: “Lid 100 can be  
 3 manufactured from materials that are sufficiently flexible to allow posts 104 a to deflect slightly  
 4 when flip top pivot 101 a is inserted, but sufficiently rigid to prevent handle 102 and flip top 101 from  
 5 being removed from mount 104 without significant force.” U.S. Patent No. 8,695,830, Detailed  
 6 Description.

1 facilitates dynamic mixing, ensuring a uniform blend of liquids, powders, or  
2 supplements and preventing powder accumulation in the corners of the lid and  
3 bottle, a common issue with flat lids.<sup>22</sup> By promoting thorough mixing and efficient  
4 incorporation of powders into the liquid, the domed shape proves essential for the  
5 bottle's functionality. Without the bulbous Domed-Body on the lid, the bottle would  
6 not be able to properly mix the contents.

7 Additionally, the domed shape aids in manufacturing by concealing  
8 imperfections and ensuring stability,<sup>23</sup> further optimizing the lid's mixing  
9 capabilities, hygiene, and ergonomics. This comprehensive approach to design  
10 makes the Domed-Body integral to the lid's overall functionality, offering users an  
11 optimal shaker bottle lid experience.

12 The ergonomic design of the Domed-Body lid enhances the comfort and ease  
13 of use in the mixing system, as this design provides a better grip for opening and  
14 closing the lid, a notable advantage when hands are wet or sweaty during workouts.  
15 And the smooth surface of the Domed-Body on both sides is functional for ease of  
16 cleaning and maintaining hygiene, which is crucial for a beverage container.<sup>24</sup>

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1 <sup>22</sup> (*See id.*).

2 <sup>23</sup> *See, e.g.*, U.S. Patent No. 8,695,830, Detailed Description (filed on 2012-09-11, issued on 2014-04-  
3 15) ("In this manner, flip top 101, handle 102, and lid base 103 can be manufactured as separate  
4 components and easily assembled, thus simplifying the manufacture of lids 100.").

5 <sup>24</sup> (*See, e.g.*, Exhibit 5, Third Party Reviews of BlenderBottle Classic and ProStack (discussing the  
6 trials and tribulations of trying to maintain hygienic shaker bottles)).

Alternative designs, such as a flat lid, a raised lid with edges, or an angled lid, would compromise the utility of the bottle.<sup>25</sup> A flat surface would be more prone to warping and could lead to powder accumulation in the corners, making it harder to mix thoroughly. The domed shape ensures that powders are effectively incorporated into the liquid, thereby enhancing the mixing process. A flat lid could also affect the bottle's stability when placed on surfaces, leading to potential wobbling or instability. Even designs with raised lids in different shapes are not as effective as the domed-body lid design. The more the shape of the design moves towards straight lines rather than curves—e.g., triangular shaped lids—the less effective the lid is at functioning as a mixer.

BlenderBottle's own advertising emphasizes the functional benefits of the Domed-Body. As noted by BlenderBottle, "[m]aking smooth, lump-free protein shakes every time [and] mix[ing] every last bit of powder" are essential functions to any shaker bottle that can only be achieved with certain shapes of the bottles and lids.<sup>26</sup> Touting features such as enhanced mixing capabilities, prevention of powder accumulation, and ease of cleaning as key benefits of the 'D551 Patent's Domed-Body lid design shows the design is appreciated and promoted primarily for its functionality.

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<sup>25</sup> See, e.g., U.S. Patent No. 3,820,692, Description, (filed 1973-04-16) (describing how a lid's domed-body design is specifically shaped like a dome to combine with the specifically shaped bottle "to create the desired fluid flow pattern therein.").

<sup>26</sup> (See Ex 9, Screenshot of BlenderBottle Classic Product Page.).

1           What's more, the Domed-Body integrates with the 'D235 Patent's overall  
2   design to improve functionality. Its shape complements other features like the  
3   Spout and Flip-Top-Cap, contributing to a cohesive design that enhances the  
4   design's overall usability and efficiency. It is also important to note the Domed-  
5   Body's functional integration with the lid and bottle's overall functional design.  
6   While the Domed-Body design contributes to the overall sleek and modern  
7   appearance of the lid, any ornamental value in the Domed-Body lid design covered  
8   by the 'D551 Patent is merely a side effect of its functional design.

9           The functionality of the lid's Domed-Body is also confirmed by dozens of  
10   utility patents, which in some instances predate the 'D551 Patent by many decades,  
11   elaborating on the functional aspects of a lid designed with a domed-body,  
12   underscoring that the Domed-Body design is primarily valued for its utility, not its  
13   aesthetic value, and therefore is primarily dictated by function.

14          In summary, the lid's Domed-Body design covered by the 'D551 Patent is  
15   primarily dictated by function, serving multiple functional roles, including  
16   enhancing the mixing process, preventing powder accumulation, handling increased  
17   volume and pressure, contributing to the bottle's durability, and providing  
18   ergonomic benefits.

**b. The Lid's Circular-Screw-Top-Base Design Covered by the 'D551 Patent Represents the Best Design for Optimal Functionality.**

The lid's Circular-Screw-Top-Base design covered by the 'D551 Patent, including its threading and the shape, are also primarily dictated by function, namely the need to provide a secure and adjustable seal. The simplicity of the design, governed by the limited ways to effectively create a threaded lid, further supports its functional nature. (*See* Ex. 12, Jovčevska et al., at 26 (noting a “screw cap would be a good option when pouring powdered substances is needed . . . [and] for a bottle which has needs of a wider neck, a regular screw cap would be applied.”)). The Circular-Screw-Top-Base design is a functional choice ensuring a leak-proof seal, durability, ease of use, and adjustable tightness. This design, aligning with industry standards, is essential for securing the lid to the bottle, particularly beneficial for active lifestyles.

The lid's ability to securely attach to the bottle is vital. The Circular-Screw-Top-Base, with its broad shoulder around the lid's Domed-Body, not only facilitates a secure attachment but also aids in ease of drinking. These elements are crucial for the lid and shaker bottle's functionality, impacting the overall user experience. The screw mechanism's primary function is to create a tight seal, preventing leaks, especially important for active users.<sup>27</sup> Its threading ensures a secure fit, outperforming other closure mechanisms like snap-on lids in durability and

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<sup>27</sup> *See, e.g.*, U.S. Patent No. 3,820,692, Description, (filed 1973-04-16) (describing the importance of the Circular-Screw-Top-Base's “grooved edge to engage the rim of the container member in a seal-tight relationship.”)



1 reliability. Moreover, the threaded design necessitates deliberate action to open,  
2 reducing the risk of accidental opening in dynamic settings like gyms or during  
3 travel. This feature adds a layer of reliability to the bottle, catering to the needs of  
4 users in various environments. And this intuitive design is user-friendly, allowing  
5 for easy opening, closing, and tightness adjustment to suit various needs. Its  
6 standardized threading potentially allows interchangeability with other bottles,  
7 adding to its practicality.

8         Considering the limited ways to create a domed shape lid that can achieve  
9 the same functionality, the Circular-Screw-Top-Base design is primarily dictated by  
10 function. Moreover, it is the optimal design for ensuring a secure, leak-proof seal,  
11 crucial for a shaker bottle intended for active use. This design not only allows for a  
12 tight fit but also provides durability, reflecting its primary function of securely  
13 attaching the lid to the bottle to enable the harsh use expected of a mixing  
14 apparatus. Its broad, flat lip around the Domed Body further facilitates both mixing  
15 and ease of drinking, emphasizing its functionality. Alternative lid top base closure  
16 mechanisms, such as snap-on, flip-top, or suction-based lids, do not offer the same  
17 level of security and durability as the screw-top design.<sup>28</sup> These alternatives are  
18 prone to wear and degradation, leading to a decreased lifespan and increased risk of

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1 <sup>28</sup> See, e.g., U.S. Patent No. 8,833,586 (filed 2010-04-16) (stating “because the cap snaps over a spout  
2 opening and is secured by tension/friction, the flip top closure is not as secure as a screw-type  
3 closure. . . . Because flip top closures open and release through upward pressure, manufacturers  
4 have not attached handles to the flip tops for fear that carrying the container/bottle by the handle  
5 would create upward pressure on the flip top and cause the flip top to open at an unwanted time.  
6 Therefore, to date, integrated handles have been attached directly to the containers/bottles  
7 themselves and/or to non-flip top closures and portions thereof such as to screw lids.”).

1 leaks, significantly impacting the bottle's utility. Not to mention they simply would  
2 not work for a shaker bottle and its lifetime of continual shaking and mixing. More  
3 importantly, the Circular-Screw-Top-Base is integral to the lid's overall function as  
4 a closure for a mixing and drinking apparatus. It works in conjunction with other  
5 functional elements to provide a leak-proof, airtight seal allowing users a cohesive  
6 and efficient user experience in operating their shaker bottle.

7 Thus, to summarize, the Circular-Screw-Top-Base on the lid covered by the  
8 'D551 Patent is fundamentally functional. Its design, dictated by the need for a  
9 secure, adjustable, and durable seal, is essential for the bottle's utility, especially in  
10 active and dynamic environments. This functionality is underscored by the  
11 potential presence of utility patents, the focus of advertising on practical benefits,  
12 and the absence of non-functional design elements.

13 **c. The Lid's Brackets Design Covered by the 'D551 Patent Represents the**  
14 **Best Design for Optimal Functionality.**

15 The design of the Brackets on the lid design covered by the 'D551 Patent,  
16 characterized by a cylindrical rotating middle enclosed within two concave-shaped  
17 brackets on each side, is a prime example of form following function and such a  
18 design is primarily dictated by said function. This specific design is crucial for the  
19 lid's overall functionality, making it superior to alternative bracket designs.

20 The cylinder in the middle of the Brackets serves as a pivot point for both the  
21 Carry-Loop and the Flip-Top-Cap. This design allows smooth and effortless rotation,

1 essential for the ease of opening the Flip-Top-Cap and the flexibility of the Carry-  
2 Loop. The cylindrical shape is optimal for reducing friction and wear, ensuring,  
3 durability, longevity, and reliability. The concave shape of the Brackets on either  
4 side provides a secure enclosure for the cylindrical pivot. This shape is crucial for  
5 maintaining the structural integrity of lid as a whole, especially to the pivot  
6 mechanism, and to enduring frequent openings and closings of the Flip-Top-Cap  
7 and regular movement of the Carry-Loop, all while maintaining structural integrity  
8 and ensuring that the Carry-Loop and Flip-Top-Cap remain attached to the lid even  
9 under continual use or stress.<sup>29</sup> On a related note, the design is ergonomically  
10 sound, providing ease of use without unnecessary bulk while providing robust  
11 structural integrity. The efficient use of material in this design adds to the overall  
12 lightness and portability of the lid and bottle, which is vital for a product designed  
13 for active lifestyles. The Brackets are designed to offer a balance between strength  
14 and flexibility: They need to be sturdy enough to support the weight of a full bottle  
15 and withstand the repeated action of flipping the cap open and closed, yet flexible  
16 enough to allow smooth movement—striking such a balance is not a design decision.

17 The D551 Patent’s design for Brackets is clearly superior to all alternatives.  
18 Without a pivoting mechanism, for example, the Brackets would restrict the

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1 <sup>29</sup> See, e.g., U.S. Patent No. 8,833,586 (filed 2010-04-16) (discussing the important of a durable,  
2 robust, structure to mount the Brackets and Flip-Cap-Top on a similarly designed lid: “Because flip  
3 top closures open and release through upward pressure, manufacturers have not attached handles to  
4 the flip tops for fear that carrying the container/bottle by the handle would create upward pressure  
5 on the flip top and cause the flip top to open at an unwanted time. Therefore, to date, integrated  
6 handles have been attached directly to the containers/bottles themselves and/or to non-flip top  
7 closures and portions thereof such as to screw lids.”).

1 functionality of both the Carry-Loop and Flip-Top-Cap. A rigid or non-pivoting  
2 design would make it difficult to open the Flip-Top-Cap or attach the bottle to bags  
3 and other items, diminishing the product's usability. And alternative shapes, such  
4 as straight or angular Brackets, could compromise the stability and smooth  
5 operation of the pivot mechanism. The concave design ensures that the cylindrical  
6 middle remains securely in place, providing a seamless and stable rotation.

7 Finally, as with every other functional element of the lid design covered by  
8 the 'D551 Patent, the Brackets design is integrated into the overall lid design of the  
9 'D551 Patent, complimenting the lid's overall design, increasing functionality and  
10 adding to its practicality without compromising on aesthetics. Without the  
11 Brackets, neither the Flip-Top-Cap nor the Carry-Loop would be adjustable and,  
12 thus, would fail to properly function; thus, the lid's Brackets on the backside of the  
13 lid are not only essential for the functioning of the Flip-Top-Cap, but the Brackets  
14 also contain an additional latch connected to the lid's Carry-Loop.

15 Simply put, the design of the Brackets on the lid covered by the 'D551 Patent  
16 is a clear testament to the principle of functionality dictating form. It is evident that  
17 these Brackets are integral to the BlenderBottle's design, significantly contributing  
18 to its functionality and user-friendliness. And it is evident that the Brackets design  
19 covered by the 'D551 Patent is dictated by function.

**d. The Lid's Flip-Top-Cap Design Covered by the 'D551 Patent Represents the Best Design for Optimal Functionality.**

The 'D551 Patent's Flip-Top-Cap design is designed primarily for functionality, emphasizing practicality over aesthetics. The design plays crucial roles in the overall lid design's usability, including easy access, leak prevention, and durability, which are essential for a product often used in dynamic settings like gyms or during travel.

More specifically, the Flip-Top-Cap design enhances the bottle's functionality by offering quick and effortless access to the contents.<sup>30</sup> As noted by BlenderBottle in promoting the functionality of the Flip-Top-Cap, the Flip-Top-Cap allows users to maximize convenience.<sup>31</sup> Its design, focusing on providing an arm attached to the Brackets' pivoting mechanism and Spout-Guard, is optimized for one-handed use, crucial during activities like workouts. *See id.* Such a functional feature is not merely for convenience but is a fundamental aspect of the lid's functional design, as evidenced by its lack of purely ornamental elements. *Id.*

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<sup>30</sup> (See Ex. 15, Sohnle, S., Braun-Munker, M., Ecker, F. (2016): A comparative study of various screw caps. Is there any correlation between the results of a target group study and instrumental measurement? *Ernaehrungs Umschau*, Vol. 63 (9), pp. 186-191. DOI: 10.4455/eu.2016.039 (noting the force required to open the lids should be balanced—it must be low enough to allow easy opening by all users, yet sufficient to hold up to the pressures of the bottles use and prevent the lid from accidentally popping open due to minor pressure from the liquid inside.)).

<sup>31</sup> (See Ex. 9, Screenshot of BlenderBottle Classic Product Page (advertising “[m]aximize your convenience at the gym with our StayOpen flip cap and adjustable carry loop! Our shaker cups feature an integrated StayOpen flip cap and an adjustable carry loop that lets you hold more when your hands are full, as well as offering a perfect spot to attach your keys.”)).

1 And the integration of the Flip-Top-Cap with the lid's other features further  
2 underscores its functional importance. It offers an alternative, faster way of  
3 accessing the bottle's contents. It works in tandem with the Spout and Spout-Guard  
4 to prevent the cap from getting lost, maintaining the bottle's effectiveness and  
5 security. The Flip-Top-Cap also enables the Spout-Guard to serve as a protective  
6 barrier for the drinking Spout, safeguarding it from external contaminants and  
7 preserving hygiene.

8 Alternative designs for the Flip-Top-Cap, such as screw-top lids or non-  
9 hinged caps, would compromise these functional benefits. They would not provide  
10 the same level of convenience, especially in situations requiring quick access, nor  
11 would they offer the same reliability in preventing leaks. And BlenderBottle's  
12 advertising reinforces the functional importance of the Flip-Top-Cap's functional  
13 design qualities, ease of use, and hygienic advantages, indicating that these  
14 elements are primarily valued for their utility and therefore fundamentally  
15 functional dictated by function.<sup>32</sup>

16 In summary, the Flip-Top-Cap is designed with practical and functional  
17 considerations in mind, ensuring secure sealing, ease of access, hygienic protection,  
18 integrated design, and durable material use, rather than merely being an  
19 ornamental feature. Therefore, this Flip-Top-Cap design should be recognized for its

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1 <sup>32</sup> See, e.g., Ex. 9, Screenshot of BlenderBottle Classic Product Page (touting the functional benefits of  
2 BlenderBottle's "StapOpen flip cap . . . that lets you hold more when your hands are full.").

functional role. *See In re Harvey*, 12 F.3d 1061, 1064 (Fed. Cir. 1993). Accordingly, because the Flip-Top-Cap serves a functional purpose, because the focus is on what these elements contribute to the design’s overall ornamentation, and because of the design’s many functional elements and its minimal ornamentation, the overall claim scope of the ’D551 Patent’s claim is accordingly narrow. *See Sport Dimension*, 820 F.3d at 1323 (citing *Ethicon Endo-Surgery*, 796 F.3d at 1333-34 (endorsing a “limited” claim scope for a design with functional elements)).

**e. The Lid’s Spout and Spout-Guard Designs Covered by the ’D551 Patent Represents the Best Designs for Optimal Functionality.**

The designs of the Spout and Spout-Guard on the ’D551 Patent’s lid design are functionally driven, optimizing the lid’s usability for efficient liquid consumption. (*See Ex. 12, Jovčevska et al.*, at 25-26 (noting the importance of a narrow spout on sport’s bottles, “which ensures fast and easy drinking.”)). These designs are essential for the lid’s effectiveness, particularly for thicker liquids like shakes or smoothies, and they play a key role in enhancing user experience. Emphasizing functionality, the Spout is ergonomically shaped to reduce contact with external contaminants, crucial for usage in environments like gyms. Moreover, the integration of the Spout and Spout-Guard with the lid is vital for preventing spills and leaks, making it ideal for active use. (*See id.* at 25.).

Their design, including shape and size, is meticulously tailored to control liquid flow, maintain hygiene, and ensure leak prevention, with no elements that

1 are extraneous to their function. This is evident in the design's focus on easy  
2 sipping, particularly advantageous for consuming thick beverages. The Spout and  
3 Spout-Guard's contribution to the lid's overall functionality is a central aspect of the  
4 'D551 Patent's design, underscoring their indispensability in a portable shaker  
5 bottle. (*See id.* at 25-27.).

6       The circular shape of the Spout-Guard on the Flip-Top-Cap that connects  
7 with the Spout to seal the bottle is an optimal design for several reasons and is  
8 crucial in the context of a shaker bottle used for mixing supplements. (*See Ex. 12,*  
9 *Jovčevska et al., at 24-26.*). It is designed to be wide enough to allow easy pouring  
10 and drinking but narrow enough to prevent chunks of supplement powder or the  
11 spherical wire agitator from escaping, ensuring a smooth drinking experience  
12 without interruptions or spillage. The Spout Guard's circular design provides a  
13 uniform seal around the entire perimeter of the Spout, which is more effective in  
14 preventing leaks compared to shapes with straight lines like squares or rectangles.  
15 And the Spout-Guard's circular shape has no edges or corners, reducing the risk of  
16 wear and tear and ensuring a longer-lasting seal. Alternative shapes like squares or  
17 rectangles for the protrusion would not be as effective. Straight lines and angles  
18 could create potential weak points where the seal might not be as tight, leading to  
19 leaks. Additionally, these shapes might make the cap more difficult to open and  
20 close quickly, reducing the bottle's overall efficiency and convenience. The circular  
21 design of the Flip-Top-Cap's Spout-Guard facilitates quick and easy access to the



1 bottle's contents while ensuring a secure seal when closed. This functionality is  
2 paramount in a shaker bottle, where frequent opening and closing are common, and  
3 a tight seal is necessary to prevent spills during shaking.<sup>33</sup>

4 The Spout and Spout-Guard designs also allows for a more controlled flow of  
5 liquid, reducing the risk of spills or splashes, which can be common when drinking  
6 directly from a wide opening.<sup>34</sup> This is particularly important for users who might  
7 consume their drinks while in motion, such as during a workout or when walking.  
8 Considering shaker bottles are primarily used for mixing supplements and  
9 powdered drinks, it's clear the Spout is designed to facilitate the drinking of such  
10 mixtures by, among other things, ensuring that the contents are easily consumable  
11 without the need for additional utensils or pouring into another container.

12 It is also important to note the hygienic functionality of the Spout and Spout-  
13 Guard designs, preventing contaminants from entering the bottle when the cap is  
14 closed, aimed at promoting user safety.<sup>35</sup> Drinking directly from a Spout is generally  
15 much more hygienic than drinking from the rim of a bottle, as the Spout can be

1 <sup>33</sup> (See Ex. 12, Jovčevska et al., at 26 (“For fast usage of the bottle, when the sportsman is in a hurry  
2 or has a limited amount of time to drink from the bottle, a hands-free solution is a good option, one  
3 that would unlock the cap within milliseconds. That could be done by implementing a pop top lid or a  
4 sports cap lid. The pop top lid ensures quick access while simultaneously doing other tasks. The  
5 sport's cap lid has the same objective as the pop top lid, and the main difference is the opening of the  
6 lid. The sport's cap lid has a hinge that has to be swung open.”)).

7 <sup>34</sup> (See Ex. 13, Packaging Styles—Bottle Caps, *available at*  
8 <https://www.liquidpackagingsolution.com/news/packaging-styles—bottle-caps> (last visited 03  
9 November 2023) (noting the Flip-Top-Cap is one of the best ways used to quickly seal or unseal  
10 access to the bottle)).

11 <sup>35</sup> (See Ex. 4, Screenshot of BlenderBottle ProStak Product Paage (touting its “SpoutGuard™ keeps  
12 your drinking spout clean”)).

more easily protected from external contaminants.<sup>36</sup> Additionally, the Spout and Spout-Guard designs can prevent direct contact with the lid's threading or other parts that might be less clean. *See* Jovčevska et al., at 25 (stating "see-through plastic, which is a very good solution for hygienic purposes and accidental spillage."). The Spout and Spout-Guard's supreme ability to prevent the transfer of germs compared to an open bottle is undeniably an essential function to the general safety of the lid's users. *See id.* It is not for ornamentation, but to enhance user interaction. Such designs are not designed for aesthetic display, but as a practical solution to maintain cleanliness.

BlenderBottle's advertising highlighting the "pro-level SpoutGuard," underscores the functional aspect of the Spout. (*See* Ex. 9, Screenshot of BlenderBottle Classic Product Page (last visited 22 November 2023)). As noted by BlenderBottle, the 'D551 Patent's covered design for a Spout and Spout-Guard "prevent[s] dirty gym fingers from touching the drinking surface." (*Id.*). By promoting its ability to keep germs off the drinking surface and prevent spills, the advertising implicitly acknowledges that the primary value of the Spout lies in its functionality, particularly in terms of hygiene and spill prevention. (*See id.*).

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<sup>36</sup> (*See, e.g.*, Ex. 8, Larson AJ, Haver S, Hattendorf J, Salmon-Mulanovich G, Riveros M, Verastegui H, Mäusezahl D, Hartinger SM. Household-level risk factors for water contamination and antimicrobial resistance in drinking water among households with children under 5 in rural San Marcos, Cajamarca, Peru. *One Health*. 2023 Jan 3;16:100482. doi: 10.1016/j.onehlt.2023.100482. PMID: 36655146; PMCID: PMC9841353. (finding that "drinking water samples collected from narrow-mouthed containers were less likely to be contaminated than samples collected from the faucet (OR = 0.55, p = 0.030) or wide mouthed containers.")).

1 The Spout's design represents the best functional design for its purpose.

2 Unlike a wide-mouth bottle, which can be likened to drinking from a bucket, the  
3 Spout offers a practical and efficient means of consuming liquids, especially thicker  
4 beverages like shakes or smoothies. This design addresses the specific requirements  
5 of a shaker bottle, ensuring ease of drinking which is essential during physical  
6 activities. The ergonomic design of the Spout is not an ornamental choice but a  
7 practical solution for comfortable and easy sipping, tailored to the bottle's intended  
8 use.

9 Alternative Spout and Spout-Guard designs significantly diminish the utility  
10 of the bottle. A broader or differently shaped spout, for example, could lead to  
11 difficulties in consuming thicker liquids and increase the risk of spills, especially  
12 during movement such as walking or exercising. The current Spout and Spout-  
13 Guard designs provide controlled flow and spill prevention, essential for the lid's  
14 primary function as a portable drinking container. Any deviation from this design  
15 would compromise these crucial functional aspects.

16 The Spout and Spout-Guard's functionality is also integral to the overall  
17 design of the lid design covered by the 'D551 Patent. It works in conjunction with  
18 the lid's other functional elements to facilitate the drinking and pouring, to ensure  
19 the lid and bottle's contents are accessible and consumable directly from the lid as  
20 well as ensuring precision placement in distributing the contents of the bottle. This

1 synergy between the Spout, Spout-Guard, and the other functional design elements  
2 comprising the 'D551 Patent's lid design further emphasizes its role as a key  
3 functional component to the 'D551 Patent's lid design rather than an ornamental  
4 feature.

5 **f. The Lid's Carry-Loop Design Covered by the 'D551 Patent Represents the**  
6 **Best Design for Optimal Functionality.**

7 The Carry-Loop design covered by the 'D551 Patent is primarily dictated by  
8 function, serving practical purposes rather than merely being ornamental.

9 As noted by BlenderBottle, the Carry-Loop serves many important functions,  
10 including, among other things, "let[ting] you hold more when your hands are full, as  
11 well as offering a perfect spot to attach your keys." (*See* Ex. 9, BlenderBottle Classic  
12 Product Page.). Simply put, without the lid's Carry-Loop design, the lid would not  
13 function as intended by the user.

14 Perhaps most important, the 'D551 Patent's covered design for a Carry-Loop  
15 enhances portability. The Carry-Loop is a key feature for enhancing the portability  
16 of the lid and bottle "mixing system." It allows users to easily carry the lid and  
17 bottle by hand or attach it to a bag, backpack, keys, or belt loop using a carabiner or  
18 similar device. (*See, e.g.,* Ex. 9, Screenshot of BlenderBottle Classic Product Page  
19 (promoting the functionality of the Carry-Loop design, advertising an "adjustable  
20 carry loop that lets you hold more when your hands are full, as well as offering a  
21 perfect spot to attach your keys.")). This is especially useful for people who are on

1 the go, such as athletes, hikers, gym-goers, mountain climbers, travelers, or any  
2 other active individuals, providing a convenient way to transport the bottle without  
3 needing to hold it constantly. On a similar note is the easy accessibility provided by  
4 the Carry-Loop, making the lid and bottle more accessible. When attached to a bag  
5 or belt, for example, the bottle is readily available for hydration, without the need to  
6 rummage through a bag, which is particularly beneficial during activities such as  
7 hiking, biking, or working out.

8         The inside outline of the Carry-Loop design is a prime example of functional  
9 design, shaped to maximize efficiency and utility. This design, featuring concave  
10 sides like an upside-down U (or upside-down bell) with straight-line sides and a  
11 curved bottom is dictated by functional necessity, making it superior to alternative  
12 designs. It is ergonomically designed to fit the natural curve of fingers and thumbs  
13 and, thus, provides a comfortable, secure grip, reducing the strain on the user's  
14 hand, which is especially beneficial when the bottle is full and heavy. And the  
15 straight-line sides of the Carr-Loop's interior outline provide structural strength,  
16 allowing for an even distribution of weight. This is crucial for a Carry-Loop, as it  
17 often bears the full weight of the lid and attached bottle, especially when it's filled.  
18 The curved bottom of the Carry-Loop design adds to this strength, preventing  
19 deformation under load. The open part of the Carry-Loop offers flexibility in terms  
20 of attachment options. Users can easily hook the bottle onto gym bags, backpacks,  
21 or even their fingers, making it highly versatile for various carrying scenarios.

1           The Carry-Loop design disclosed by the 'D551 Patent is the best available  
2   design for optimal functionality and is superior to all alternative designs. A closed  
3   loop design, for instance, would restrict the ease of attaching the bottle to larger  
4   hooks or handles. The open design of the 'D551 Patent's Carry-Loop design, on the  
5   other hand, offers more versatility without sacrificing strength or functionality.  
6   Along the same lines, alternative shapes, such as a fully circular or square loop,  
7   might not offer the same ergonomic comfort, efficient weight distribution, or  
8   structural integrity. The concave shape is uniquely suited to providing a  
9   comfortable grip while maintaining structural integrity. And the design utilizes  
10  material efficiently, providing maximum strength and functionality without  
11  unnecessary bulk. This makes the bottle lighter and more practical to use,  
12  especially important for a product meant to be portable and easy to carry. And the  
13  connection to the 'D551 Patent's lid's Brackets is a key aspect of the design. This  
14  integration ensures that the Carry-Loop remains firmly attached to the lid and  
15  bottle, providing reliability and stability during transportation, and also contributes  
16  to the overall structural integrity of the bottle.

17           The Carry-Loop design covered by the 'D551 Patent is the result of careful  
18  consideration of function, ergonomics, and practicality. It outperforms alternative  
19  designs by providing a comfortable, versatile, and durable solution for carrying the  
20  lid bottle, making it evident that its design is dictated by function and is the best  
21  available option for its intended purpose.

1 To summarize, the design of the 'D551 Patent for a shaker bottle lid  
2 exemplifies functional-driven design at every level. Each component of the lid—the  
3 Domed-Body, Spout, Flip-Top-Cap, Spout-Guard, Brackets, and Carry-Loop—is  
4 meticulously engineered to meet specific functional requirements optimally. This  
5 means that from its overall structure to the smallest detail, the lid's design is  
6 primarily influenced by practicality and utility, making function the dominant  
7 factor in its design process.

8 **II. THIS COURT SHOULD ADOPT HYDRA CUP'S PROPOSED CLAIM**  
9 **CONSTRUCTION FOR THE 'D235 PATENT BECAUSE IT FOLLOWS FEDERAL**  
10 **CIRCUIT PRECEDENT.**

11 The entire design of the 'D235 Patent, as well as each of its individual  
12 elements—the Bottle-Lid, the Bottle-Head, the Bottle-Screw-Top-Head, the Bottle-  
13 Bottom, the Bottle-Front, the Bottle-Back, the Bottle-Sides, and the Measurement-  
14 Markings-Tool—are dictated by function rather than ornamentation. Each of these  
15 components plays a critical role in the bottle's functionality, specifically designed to  
16 enhance the utility of the product for its intended purposes such as mixing, pouring,  
17 storing, and transporting liquids. The functional nature of these design elements is  
18 further corroborated by BlenderBottle's own marketing strategies, which  
19 prominently highlight the practical benefits and innovative features of the bottle.  
20 This promotion is not focused on aesthetic qualities but rather on the efficiency,  
21 convenience, and effectiveness that these design elements bring to the user.

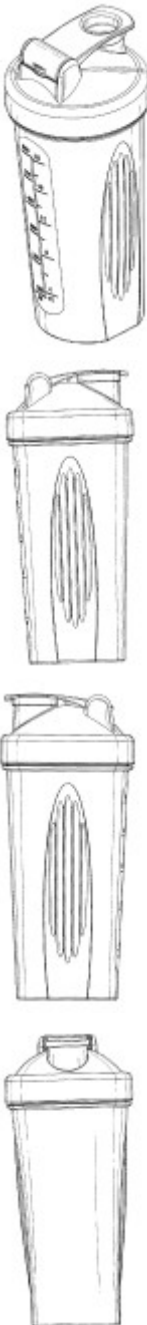
1 Additionally, customer feedback and testimonials consistently praise the functional  
 2 aspects of the bottle, emphasizing its practical utility in everyday use. Furthermore,  
 3 the functionality of each design element is also recognized in existing prior art  
 4 utility patents. These patents describe the utility and practical applications of  
 5 similar design elements, thereby reinforcing the argument that the BlenderBottle's  
 6 design is fundamentally functional. The D235 Patent's design approach aligns with  
 7 the product's purpose and is evident in how the product is marketed, received by  
 8 consumers, and reflected in related utility patents. Therefore, the design should be  
 9 viewed as dictated by function, positioning it outside the realm of purely  
 10 ornamental design patent considerations.

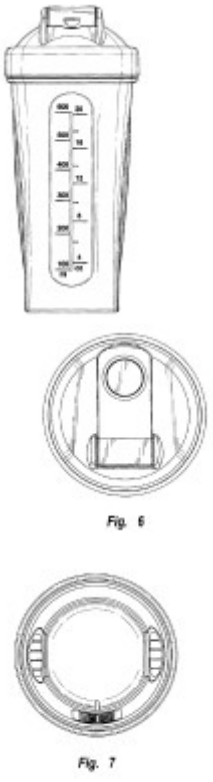
11 **A. Hydra Cup's Proposed Claim Construction for the 'D235 Patent.**

12 .

Claim Term	Hydra Cup's Proposed Construction
The ornamental design for a bottle as shown and described in the image.	<p>The ornamental design for a bottle, as shown and described, wherein the overall design and each individual design element are claimed as ornamental to the extent they are not dictated by their functional utility and wherein the Claim acknowledges the presence of functional elements primarily dictated by function as follows:</p> <p>(1) the <b>Bottle-Body</b> is primarily designed for drinking, mixing, pouring, storing, and transporting; (2) the <b>Bottle</b></p>



Claim Term	Hydra Cup's Proposed Construction
	<p><b>Ribbed-Grip-Sides</b> on both sides of the Bottle-Body are designed for enhanced grip and handling; (3) the <b>Volumetric-Measurement-Tool</b> and its translucent window, located on the back of the Bottle-Body, allow for measuring and viewing the bottle's contents; (4) the <b>Bottle-Screw-Top-Head</b> is functionally designed for securely sealing with the Bottle-Lid and facilitating the bottle and lid's overall functions of mixing, pouring, drinking, storing, and transporting; (5) the <b>Bottle-Bottom</b> is designed to provide structure, stability and support, as well as to enable the implementation of other functional elements; (6) the <b>Bottle-Lid</b> is essential for sealing and securing the bottle contents that enable the overall design to provide optimal drinking, mixing, pouring, storing, and transporting capabilities.</p> <p>Both the overall design and each individual design element comprising the overall design, being primarily dictated by their functional nature, are not claimed for their ornamental design, and any protection is disclaimed over these designs dictated by function.</p> <p>The Claim further acknowledges a broad array of prior art involving bottle and lid designs with substantial similarities and, therefore, the scope of protection is limited to the unique, non-functional, ornamental aspects that distinguish this design from existing designs in the prior art.</p>

Claim Term	Hydra Cup's Proposed Construction
 <p>Fig. 6</p> <p>Fig. 7</p>	

**B. The Scope of the 'D235 Patent's Claim is Limited by the Overall Functional Purpose of the Design Dictated by its Overall Functionality and Each Individual Functional Design Element Compromising the Overall Design.**

***1. The Overall Design of the BlenderBottle 'D235 Patent is Primarily Dictated by Function.***

The overall design covered by the 'D235 Patent is undeniably dictated by function rather than ornamentation. This design, encompassing both the shaker bottle and lid, is a product of careful consideration of the practical needs of active users who require a dependable and efficient container for their nutritional drinks.

More specifically, the 'D235 Patent's design for a shaker bottle and lid, by its very nature, is a quintessentially functional article. (See Ex. 12, Jovčevska et al., at 25 (finding the following functional elements most important to consumers of exercise bottles: "better ergonomic features for easy and comfortable hand (finger) placement, better way to decrease the slipping area and increase the friction area in order to obtain better bottle's grip, a lip and cap for quick access and usage.")).<sup>37</sup> At its core, it serves as a versatile tool, facilitating a range of activities from mixing to pouring and storage. See *id.* This multifunctionality is not just an add-on; it is the essence of the 'D235 Patent's design. The integrated design elements are all meticulously crafted to enhance its primary function as a mobile mixing and storage apparatus. The D235 Patent lacks any design elements that are solely ornamental. From the ergonomic body to the secure lid, each aspect serves a functional purpose, contributing to the bottle's overall utility as a mobile mixing and storage tool.

The D235 Patent's lid and bottle design were optimized for functionality. The design represents the most effective solution for its multifunctional purpose and its integrated elements are engineered to facilitate activities like drinking, mixing, pouring, pouring, storing, and transporting. (See Ex. 10, Screenshot of BlenderBottle Touting Many Uses (March 2012)). Each component's design is not

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<sup>37</sup> See also Ex. 19, Toscano, R. A., Herazo, J., Millan, R. R., Palma, H., Martinez, J., Approach methodology for the sustainable design of packaging through computational tools: Case study: Water bottles, Case Studies in Thermal Engineering, Vol. 16, pp. 1-11) (2019), available at <https://doi.org/10.1016/j.csite.2019.100561>; Ex. 20, Lovett, J., Engineering Design of a Disposable Water Bottle for an Australian Market, [https://eprints.usq.edu.au/24673/1/Lovett\\_%202013.pdf](https://eprints.usq.edu.au/24673/1/Lovett_%202013.pdf) and <https://www.semanticscholar.org/paper/Engineering-design-of-a-disposable-water-bottle-for-Lovett/e3a1118339d0621eac044ec678b44359b6158369> (last visited on 15 November 2023) (2013).

1 just an aesthetic choice but is optimized for practical utility, making it the best  
2 design for these functions.

3       When considering alternative designs, it becomes clear that the 'D235  
4 Patent's design is unrivaled in its functional superiority. (*See, e.g.*, Ex. 5, Screenshot  
5 of BlenderBottle Touting Effective Results of Mixing System (04 May 2012) ("I can  
6 vigorously shake one of those shakers for 20 minutes and not get results as effective  
7 as 10 seconds with the Blenderbottle.")). Other designs may compromise on  
8 efficiency, ease of use, or effectiveness in mixing and storing contents. The D235  
9 Patent's design, however, with its unique combination of features, stands out as the  
10 pinnacle of functional design in its category. And alternative designs would  
11 significantly reduce the product's effectiveness. The D235 Patent's unique design,  
12 including its ergonomic shape, durable materials,<sup>38</sup> and functional lid, provides an  
13 unrivaled level of efficiency and ease of use. Any deviation from this design could  
14 compromise the bottle's ability to effectively mix, store, and transport contents,  
15 demonstrating the functional necessity of its current design.

16       The design covered by the D235 Patents is a clear example of functionality  
17 dictating form. The integration of its functional elements is not a mere coincidence;  
18 it is a deliberate design choice that makes the 'D235 Patent more than just a shaker  
19 bottle and lid. It's a comprehensive tool designed for users who need a reliable,  
20 efficient, and effective solution for their drinking, mixing, pouring, storing, and

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1 <sup>38</sup> *See, e.g.*, Ex. 5, Screenshot of Customer Reviewing BlenderBottle Durability (July 2011).

1 transporting needs. The interdependence of its functional elements elevates the  
2 'D235 Patent beyond a simple design for a shaker bottle and lid to an indispensable  
3 tool for its intended use. Each element of the 'D235 Patent's design is crucial in  
4 achieving the highest level of functionality. The shape of the bottle, the materials  
5 used, the design of the lid—every detail is optimized for practical utility. And such  
6 optimization is evident in how seamlessly each element works with the others,  
7 creating a harmonious blend of efficiency and convenience.

8 ***2. Each Design Element Comprising the Overall Design Covered by the***  
9 ***'D235 Patent is Dictated by Function.***

10 Each design element covered by the 'D235 Patent's design for a shaker bottle  
11 and lid—i.e., the Bottle-Body, the Ribbed-Grip-Bottle-Side, the Bottle-Screw-Top-  
12 Head, the Bottle-Head, the Bottle-Bottom, the Bottle-Front, the Bottle-Back, and  
13 the Bottle-Lid—is dictated by function rather than ornamentation. Each of these  
14 elements, designed with a specific purpose in mind, contributes to the overall  
15 functionality of the 'D235 Patent's shaker bottle and lid design, ensuring it  
16 effectively meets the practical demands of its users. From the ergonomic Ribbed-  
17 Grip-Bottle-Side that enhances handling to the Bottle-Bottom designed for stability,  
18 and from the Bottle-Screw-Top-Head facilitating controlled pouring to the Bottle-  
19 Lid ensuring a leak-proof closure, every element serves a utilitarian purpose.  
20 Together, these individual functional elements combine and integrate with the  
21 other functional elements to form a shaker bottle and lid that is primarily

functional, with their collective design focusing on efficiency, usability, and practicality as well as drinking, mixing, pouring, storing, and transporting, rather than on mere aesthetic appeal.

**a. The Bottle-Body Design Covered by the 'D235 Patent Represents the Best Design for Optimal Functionality.**

The design of the Bottle-Body covered by the 'D235 Patent, with its specific shape, material choice, size, and integration with other functional elements, is dictated by its utility. Each aspect of the design enhances the bottle's effectiveness for its intended purposes, making it the best design for functionality compared to alternatives. The Bottle-Body's primary role is to facilitate the containment, mixing, pouring, storing, and transporting of liquids or dry items, embodying practicality in its very structure. (*See* Ex. 12, Jovčevska et al., at 24-27.).

The design of the Bottle-Body, including the rounded front and back with flat, straight-edge portions on the sides in the shape of a surfboard with ribbed gripping ridges, serves specific functional purposes, includes effective mixing of contents, providing a comfortable and secure grip,<sup>39</sup> and ensuring ease of handling and transport. The material choice, such as high-quality, durable plastic, underscores the bottle's intended use in active settings, prioritizing durability and safety.

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<sup>39</sup> (*See* Ex. 12, Jovčevska et al., at 24 (stating "[t]he shape of the bottle is quite small, which makes it easier to handle and transport . . . [and] [t]he curves of the design have a big impact on the ergonomics, as well. However, that means that this bottle holds a smaller amount of liquid.)).

1       The Bottle-Body lacks purely ornamental design elements. Its ergonomic and  
 2       mixing-efficient shape, leak-resistant design, and stability-focused base affirm its  
 3       role as a utility-centric component.<sup>40</sup> And any aesthetic aspects it may have are  
 4       minimal at best; they do not detract from the designs functional attributes. The size  
 5       and proportions of the Bottle-Body are optimized for holding the necessary amount  
 6       of liquid without becoming too heavy or unwieldy, making it manageable and  
 7       transportable, and fitting into standard bottle holders.<sup>41</sup>

8       The choice of material for the Bottle-Body reinforces this functional  
 9       narrative.<sup>42</sup> High-quality, durable plastic is selected to withstand frequent use and  
 10      the physical demands of shaking and impacts—a material choice aligned with the  
 11      designs intended use in active settings, emphasizing durability and safety over  
 12      aesthetic appeal. Additionally, the Bottle-Body’s base design enhances the bottle’s  
 13      stability, preventing tipping and spilling in various environments, from gyms to  
 14      outdoor activities. This stability feature is a practical response to the dynamic use-  
 15      cases of the BlenderBottle.<sup>43</sup>

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1      <sup>40</sup> “A practical water bottle would have to interact well with the user, be manageable and easy to  
 2      transport, as well as fit into the standard bottle holders (such as bike or car bottle holders).” (*See Ex.*  
 3      *P, Jovčevska et al., at 27.*).

4      <sup>41</sup> (*See Ex. 12, Jovčevska et al., at 27* (finding that if “a bottle holds too little liquid it wouldn’t do its  
 5      function properly, considering the user would either have to refill the bottle multiple times or to have  
 6      multiple bottles to save time . . . [and] [i]f a bottle holds too much liquid, its size and proportions  
 7      would be too big, resulting in a heavier bottle, one that is more difficult to handle.”)).

8      <sup>42</sup> *See, e.g., U.S. Patent No. 3,820,692, Abstract, (filed 1973-04-16)* (stating the “[bottle] is *preferably*  
 9      *made of an unbreakable material* such as the aforementioned *polyethylene* or similar material to  
 10     augment sealability with a [lid]”).

Alternative designs would significantly impair the bottle’s utility. A different shape or material, for example, could compromise the bottle’s durability, its ease of use during physical activities, or its effectiveness in mixing contents. The current design, with its ergonomic features and robust construction, is thus crucial for maintaining the bottle’s functional integrity. For example, not one of the alternative designs BlenderBottle referenced in its Amended Complaint as ‘[e]xamples of commercially available alternatives’ is substantially similar to the design at issue in this case. ( *See* Am. Compl, ¶ 38.). More importantly, each of the alternative design offers inferior functionality. (*See id.*). Most of the alternative designs referenced by BlenderBottle have a lids with a flat body, as opposed to a concave, domed body like the lids at issue in this case. (*See id.*). As discussed above, the lid’s Domed-Body design is absolutely essential to optimal mixing capabilities as well as maintaining optimal hygiene and health and promoting a longer overall life for the lid and bottle. (*See id.*). The only two alternative designs offering a domed lid body like the design at issue in this case—the Huel Shaker Bottle and the Shakeshpere Tumbler—are both inferior in several other ways. (*See id.*). The Huel Shaker’s lid’s domed body takes up twice as much room as the lids at issue, leaving significantly less room for

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<sup>43</sup> (*See* Ex. 16, Demirel, B., Daver, F. (2009): Optimization of poly(ethylene terephthalate) bottles via numerical modeling: A statistical design of experiment approach, *Journal of Applied Polymer*, Vol. 114, Issue 2, pp. 1126-1132 (noting the most commonly used material for exercise bottles is polyethylene terephthalate (PET)); *see also* Ex. 18, Kandikjan, T., Mircheski, I. (2020): Design with Plastics, Published by Faculty of Mechanical Engineering in Skopje (stating that polyethylene terephthalate is considered safe to use in food in the food industry.); *see also* Ex. 12, Jovčevska et al., at 26 (describing PET as “a clear, colourless, yet strong plastic with good mechanical, thermal and chemical properties, as well as dimensional stability . . . [and] resistant to moisture, alcohol, solvents, and impact,” meaning, because PET is suitable and safe to use for humans, it is the preferred plastic to use in food and beverage packaging.)).



1 the bottle to hold contents. (*See id.*). And it does not have flip cap, or spout or many  
2 other functional elements essential to optimal functionality. (*See id.*). And the  
3 bottom fifth of the Shakesphere Tumbler's bottle body significantly tapers to narrow  
4 the bottle base to roughly half the size of the rest of the bottle body. (*See id.*). Not  
5 only does the Shakesphere Tumbler's narrow bottle base significantly decrease  
6 mixing functionality by altering the fluid pressure, but it also means the bottle body  
7 is much wider than the narrow bottle base and therefore less sturdy and more likely  
8 to fall over. (*See id.*).

9       The Bottle-Body's design represents the most effective solution for its  
10 functional requirements—drinking, mixing, pouring, storing, and transporting  
11 liquids. This includes its ergonomic shape for ease of handling, material choice for  
12 durability, and size to accommodate the necessary volume. Its design, emphasizing  
13 utility over aesthetics, is tailored to meet the rigorous demands of its intended use.  
14 And the Bottle-Body's design integrates seamlessly with other functional elements  
15 covered by the 'D235 Patent like the lid and mixing mechanisms, enhancing its  
16 overall practicality. The Bottle-Body's secure fit with the lid exemplifies its practical  
17 design, prioritizing leak-resistance—a critical aspect of functionality for a portable  
18 container. This feature alone distinguishes it from being merely an ornamental  
19 aspect. Its compatibility with mixing mechanisms like a wire whisk ball is tailored  
20 to ensure efficient mixing, a critical aspect for a shaker bottle. The functional nature  
21 of the Bottle-Body design covered by the 'D235 Patent is further substantiated and

1 clearly articulated by descriptions in multiple utility patents predating the 'D235  
2 Patent.

3 In conclusion, the Bottle-Body covered by the 'D235 Patent is a prime  
4 example of functionality dictating design. Its material choice, ergonomic shape, and  
5 overall design are integral to its effectiveness as a container for active lifestyles,  
6 clearly demonstrating that its primary purpose is utility, not ornamentation.  
7 Therefore, its design should not be considered within the scope of ornamental  
8 design patent protection.

9 **b. The Ribbed-Grip-Bottle-Sides Design Covered by the 'D235 Patent**  
10 **Represents the Best Design for Optimal Functionality.**

11 The Ribbed-Grip-Bottle-Sides design covered by the 'D235 Patent,  
12 characterized by their unique surfboard shaped grips with five long grippable ridges  
13 running from the bottom of the Bottle-Body almost to the Bottle-Lid, are designed  
14 for functionality. In fact, this design is almost devoid of non-functional elements,  
15 focusing solely on enhancing grip and usability. The ridges' shape, size, and pattern  
16 are intentionally created to provide a secure, non-slip grip, crucial during the  
17 physical activities for which the bottle is commonly used. The design choice of long,  
18 thin ridges on the BlenderBottle Classic Shaker Bottle is not only functional but  
19 also superior to other alternatives like dots or diagonal ridges. These ridges provide  
20 better grip, ergonomic comfort, consistent traction, effective leverage for shaking,

1 durability, pleasing tactile feedback, and uniform pressure distribution, enhancing  
2 the overall usability and efficiency of the bottle.

3       The primary function of the five long ridges is to provide a better grip. This is  
4 especially important for a shaker bottle, as it is often used while in motion or at the  
5 gym where hands might be sweaty. The long, thin ridges provide a more substantial  
6 surface area for the fingers to grip compared to dots or smaller patterns. This  
7 increased contact area results in better control, especially when shaking the bottle,  
8 as the motion requires a firm, non-slip grip. The ridges prevent the bottle from  
9 slipping out of the user's hand, ensuring safety and ease of use. Shaker bottles are  
10 designed to mix the contents thoroughly, which often requires vigorous shaking.  
11 The ribbed grip ridges provide additional leverage, making it easier to hold the  
12 bottle securely during this process. This ensures that the user can shake the bottle  
13 effectively without exerting excessive effort or losing grip. The ridges provide  
14 excellent leverage for the shaking motion required to mix the bottle's contents.  
15 Their length and positioning ensure that the force applied by the hand is effectively  
16 transmitted to the bottle, facilitating efficient mixing. Alternatives like dots might  
17 not provide the same level of leverage, potentially making the shaking process less  
18 efficient.

19       These ridges distribute pressure uniformly across the hand, reducing the  
20 likelihood of discomfort or pressure points that could occur with alternative designs

1 like dots, which might create localized pressure points. When the bottle is gripped  
2 tightly, the ridges help distribute the pressure more evenly across the hand. This  
3 reduces the stress on any single point of the hand, making it more comfortable to  
4 hold the bottle for extended periods, especially when it's full and heavier. The ridges  
5 also add to the structural integrity of the bottle. By reinforcing the sides, they can  
6 help the bottle withstand impacts and drops, which are common in gym and outdoor  
7 environments thus ensuring the bottle's longevity and reliability. Along similar  
8 lines, if the bottle is used for hot liquids, the ridges can aid in dissipating heat,  
9 making it more comfortable to hold without feeling too hot.

10       Along similar lines, the utility of the Ribbed-Grip-Bottle-Sides is also evident  
11 from the ergonomic design. (*See Jovčevska et al.*, at 24-27.) The parallel  
12 arrangement of the ridges aligns well with the natural position of the fingers when  
13 holding the bottle. (*See id.*). And the surfboard shape mimics the curvature of the  
14 human hand, making it easier to grip, thereby reducing the chances of the bottle  
15 slipping out of the user's hand, especially when the bottle is wet or the user's hands  
16 are sweaty. This ergonomic alignment can reduce hand fatigue, making it more  
17 comfortable to hold for extended periods, unlike diagonal ridges or dots that might  
18 create uneven pressure points. The design ensures a comfortable and firm grip,  
19 especially important when shaking the bottle to mix contents or drinking from it  
20 during vigorous activities.<sup>44</sup> The continuous nature of the long ridges offers

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1 <sup>44</sup> *See Ex 12.*, Jovčevska et al., at 24 (noting a "bottle is panelled with rubber on both sides, so no  
2 matter which side the hand is on, the rubber ensures the bottle won't slip from the user's hands.");

1 consistent traction along the length of the grip. In contrast, dots or shorter patterns  
2 might provide inconsistent grip, leading to a higher likelihood of the bottle slipping,  
3 especially when hands are sweaty or the bottle is wet. The absence of such grips  
4 would significantly alter the bottle's utility, as alternative designs like smooth sides  
5 would make the bottle more prone to slipping, thus reducing its practicality in  
6 fitness and sports contexts. *See id.*

7 Furthermore, the specific design of the grip strips in the 'D235 Patent—long,  
8 narrow, and extending almost the full length of the bottle—increases the surface  
9 area for the user's grip, enhancing security during use. *See id.* This design is not  
10 just beneficial but represents the optimal choice for a shaker bottle, given its  
11 primary function of being shaken vigorously. *See id.* The surfboard shape of the  
12 Ribbed-Grip-Bottle-Sides, being wider in the middle and tapering towards the ends,  
13 offers a stable base for the bottle. This shape helps in distributing the weight of the  
14 liquid evenly, reducing the likelihood of the bottle tipping over. Additionally, the  
15 ridges add structural strength to the bottle, making it more durable against dents  
16 and deformation. Long, thin ridges are likely to be more durable and resistant to  
17 wear over time compared to dots or other patterns. They can withstand the constant  
18 pressure and motion of gripping and shaking without significant degradation,  
19 maintaining their functionality for a longer period. And the ridges provide

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1 *See id.* at 27 (finding consumers favor bottles with ergonomic features that enhance grip  
2 functionality and that it is essential for the main body of a sportsman's bottle should have an  
3 ergonomically designed handling mechanism to ensure a comfortable and firm grip during use, as  
4 well as offering better control when pouring or drinking from the bottle).

1 additional leverage. When shaking the bottle, the ridges allow for a firmer grip,  
 2 enabling more efficient mixing of the contents. This is particularly useful for  
 3 thoroughly mixing protein powders or supplements that tend to clump. And if the  
 4 bottle is used for hot beverages, the ridges can also aid in dispersing heat, making  
 5 the bottle more comfortable to hold.<sup>45</sup>

6 In conclusion, the Ribbed-Grip-Bottle-Sides covered by the 'D235 Patent, are  
 7 fundamentally functional. Their design is dictated by the need to provide a secure  
 8 grip, enhancing the bottle's safety and usability, particularly in active and dynamic  
 9 settings. As such, these design elements should be viewed as dictated by function,  
 10 and thus outside the scope of ornamental design patent protection.

11 **c. The Measurement-Markings-Tool Design Covered by the 'D235 Patent**  
 12 **Represents the Best Design for Optimal Functionality.**

13 The D235 Patent's Measurement-Markings-Tool design with a translucent  
 14 window, is dictated by function, not form. The design of the Measurement-  
 15 Markings-Tool on the 'D235 Patent's design is primarily driven by functionality.  
 16 The elongated shape, external placement, use of translucent material, and clear  
 17 visibility all serve to make the bottle more practical, durable, and user-friendly.  
 18 This design choice reflects a careful consideration of the needs of the users,  
 19 prioritizing accuracy, convenience, and longevity. These features are essential for

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1 <sup>45</sup> BlenderBottle described the problem with bottle's being too hot or cold for users to comfortably  
 2 grip in its utility patent. U.S. Patent No. 8,833,586 (filed 2010-04-16) (describing how the  
 3 temperature of the bottle's contents and the condensation caused by the bottle's contents were issues  
 4 faced in engineering the design).

1 the bottle's practical use in accurately measuring and monitoring the contents,  
2 crucial for health and fitness routines.

3       The Measurement-Markings-Tool and translucent window lack ornamental  
4 elements, underscoring their functional purpose. And these features as  
5 fundamental to the bottle's overall utility. (*See* Ex. 12, Jovčevska et al., at 25  
6 (stating "see-through plastic, which is a very good solution for hygienic purposes  
7 and accidental spillage.")). The Measurement-Markings-Tool provides precise  
8 measurements for mixing supplements or liquids, while the translucent window  
9 allows users to visually track the volume inside. *See id.* This design's elongated  
10 shape allows for a wider range of measurements to be included on the bottle,  
11 providing users with more options for precise measurements. Unlike shorter or  
12 more compact designs, the elongated shape ensures that the markings are spread  
13 out and easily readable, which is crucial for accurately measuring liquid  
14 ingredients. *See id.* This combination is vital in contexts where exact quantities are  
15 necessary, such as in dietary and hydration management. *Id.*

16       And placing the volumetric measurements on the exterior of the bottle is the  
17 most practical design choice. This external placement ensures that the markings  
18 are always visible, regardless of the contents or the level of the liquid inside the  
19 bottle. If the markings were inside, they could be obscured by the contents, making  
20 it difficult to measure accurately. The external placement and material choice

1 contribute to the durability of the markings. Being on the outside and made of a  
2 resilient material, they are less likely to fade or wear off with time and use,  
3 ensuring the bottle remains functional for a longer period. On a related note, having  
4 the markings on the outside also makes the bottle easier to clean. Internal  
5 markings could potentially trap ingredients or be eroded by repeated washing, but  
6 external markings avoid these issues, maintaining their visibility and accuracy over  
7 time. The use of a translucent material for the bottle is integral to the functionality  
8 of the volumetric markings. It allows users to easily see the liquid level against the  
9 markings, facilitating accurate measurement. A non-translucent or opaque material  
10 would make it challenging to discern the exact liquid level, diminishing the  
11 usefulness of the markings. The design of these markings takes into account the  
12 ease and efficiency of use for the consumer. The clear, elongated markings on a  
13 translucent bottle allow for quick and accurate measurements, improving the user  
14 experience, especially in fast-paced environments like gyms or when preparing  
15 meals.

16 BlenderBottle's marketing emphasizes these features' functionality,  
17 promoting the Measurement-Markings-Tool for its precision and ease in achieving  
18 health goals, clearly indicating the tool's practical importance over aesthetic appeal.  
19 For example, BlenderBottle explains the functionality and importance of the  
20 Measurement-Markings-Tool, stating the Measurement-Markings-Tool allows users  
21 to "[g]et precise measurements every time. . . [and] [o]ur easy-to-read



1 measurement markings allow you to add just the right amount of ingredients for  
2 your smoothies, protein shakes, and more. Our shaker cups' measurement markings  
3 make it easy to achieve your health goals.” (See Ex 9, Screenshot of BlenderBottle  
4 Classic Product Page.).

5 In summary, the designs for the Measurement-Markings-Tool and  
6 translucent window featured in the 'D235 Patent are essential for the bottle's  
7 functionality. Their presence in the bottle's design is not for decorative purposes but  
8 for practical utility, making these elements fundamental to the bottle's  
9 effectiveness. As such, they should be viewed as functional components, crucial to  
10 the bottle's use, rather than elements of ornamental design eligible for design  
11 patent protection. Such designs offer the most functional design solution. They are  
12 not merely aesthetic enhancements but are practical tools that significantly improve  
13 the bottle's utility. Without these features, the bottle would lose its effectiveness as  
14 a tool for precise measurement and content monitoring, demonstrating their  
15 indispensability for the bottle's intended use.

16 **d. The Bottle-Screw-Top-Head Design Covered by the 'D235 Patent**  
17 **Represents the Best Design for Optimal Functionality.**

18 The Bottle-Screw-Top-Head's shape, threading, and size are all designed to  
19 provide a secure seal with the lid. (See Ex. 12, Jovčevska et al., at 24-26.). This is a  
20 purpose driven design, essential for the bottle's main functions such as spill-free

1 drinking, efficient mixing, and easy cleaning.<sup>46</sup> The design lacks aesthetic value,  
2 focusing instead on practical utility.

3 The extra-wide design of the mouth offered by the wide opening in the Bottle-  
4 Screw-Top-Head is dictated by function. It enables easy filling, pouring, and  
5 cleaning, addressing the practical needs of users, especially in situations where  
6 quick and efficient access is necessary. And the precise engineering of the Bottle-  
7 Screw-Top-Head's dimensions and threading ensures a leak-proof and secure  
8 connection with the lid. This aspect of the design is critical for containing liquids,  
9 especially during vigorous shaking, which is a common use-case for shaker bottles.

10 Accordingly, the design of the Bottle-Screw-Top-Head covered by the 'D235  
11 Patent is primarily dictated by function. It is an integral component of the bottle  
12 and lid design covered by the 'D235 Patent.

13 ***e. The Bottle-Bottom Design Covered by the 'D235 Patent Represents the Best***  
14 ***Design for Optimal Functionality.***

15 The design of the Bottle-Bottom covered by the 'D235 Patent is  
16 predominantly functional. The pill or stadium shape for enhanced stability, the  
17 ergonomic grip facilitated by the Bottle-Sides, the functional protrusions for  
18 improved surface grip, and the specific design choices of the Ribbed-Grip-Bottle-  
19 Sides and Measurement-Markings-Tool all underscore the utilitarian nature of the  
20 design. These elements, far from being merely aesthetic, are essential for the

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1 <sup>46</sup> See Ex. 12, Jovčevska et al., at 25 ("The top is removable, for easier pouring, mixing and cleaning.")

1 bottle's primary functions of mixing, pouring, storing, and transporting, and are  
2 echoed in BlenderBottle's own marketing. Therefore, it is clear that the design of  
3 the 'D235 Patent's Bottle-Bottom is a product of practical necessity and utility, not  
4 ornamentation.

5 More specifically, the Bottle-Bottom design detailed in the 'D235 Patent, is  
6 driven by functionality. The unique pill or stadium shape of the Bottle-Bottom  
7 enhances the bottle's stability and ergonomics. This design is crucial for preventing  
8 tipping due to the bottle's tall body and facilitates easy gripping and handling. The  
9 flat Bottle-Sides, when paired with this base shape, further contribute to its  
10 ergonomic design.

11 Additionally, the protrusions at the bottom of the Bottle-Bottom, as shown in  
12 figure 7 of the 'D235 Patent, are not just decorative but serve a practical purpose.  
13 They improve the bottle's grip on surfaces, reducing the risk of slippage and spills.<sup>47</sup>  
14 Altering these protrusions would negatively impact the bottle's functionality,  
15 demonstrating their practical importance.

16 Furthermore, the Bottle-Bottom also influences the positioning of various  
17 elements like the company's logo, the Measurement-Markings-Tool, and the grip  
18 strips on the Bottle-Sides. The alignment of the gripped Bottle-Sides with the  
19 straight sides of the Bottle-Bottom is essential for optimal handling. While the

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1 <sup>47</sup> (See, e.g., Ex. 9, BlenderBottle Classic Product Page (touting the functional benefits derived from  
2 the Bottle-Bottom, stating the BlenderBottle Classic "shaker boasts a rounded base for better  
3 mixing.")).

1 logo's placement might seem decorative, it aids in quick bottle orientation for brand  
2 recognition and content measurement. The transparent Measurement-Markings-  
3 Tool, strategically located for visibility, is designed for accurate measurement of  
4 contents, as highlighted in BlenderBottle's advertising.<sup>48</sup>

5 When compared to alternative designs, the 'D235 Patent's Bottle-Bottom  
6 design stands out for its combination of stability, durability, ergonomics, and  
7 functional aesthetics. Other designs might prioritize one aspect over the others, but  
8 the 'D235 Patent's Bottle-Bottom design achieves a balance that enhances the  
9 overall user experience. Furthermore, the 'D235 Patent's Bottle-Bottom design is  
10 designed to work in harmony with other features of the 'D235 Patent, such as the  
11 grip strips on the sides and the wide mouth at the top. This cohesive design ensures  
12 overall functionality and user-friendliness, making the bottle more than just a  
13 container but a well-thought-out tool for hydration and nutrition. Moreover, the  
14 functional nature of the Bottle-Bottom design covered by the 'D235 Patent is further  
15 substantiated and clearly articulated by descriptions in multiple utility patents  
16 predating the 'D235 Patent.

17 In conclusion, the 'D235 Patent's Bottle-Bottom design is predominantly  
18 functional. Its stability-enhancing shape, ergonomic considerations, material  
19 composition, and features like the Measurement-Markings-Tool and grip strips all  
20 contribute to the bottle's practical usability and efficiency. Therefore, the design

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1 <sup>48</sup> (*See id.*).

1 should be viewed as functional and integral to the bottle's utility, not merely  
2 ornamental.

3 ***f. The Bottle-Lid Design Covered by the 'D235 Patent Represents the Best***  
4 ***Design for Optimal Functionality.***

5 The Bottle-Lid design covered by the 'D235 Patent is fundamentally  
6 functional in design, with its features and form dictated by practicality and utility,  
7 making it an integral component of the bottle's efficiency and effectiveness in active  
8 lifestyle contexts, rather than being a mere ornamental addition.

9 The lid design covered by the 'D235 Patent is substantially similar to the lid  
10 design covered by the 'D551 Patent except the lid design in the 'D235 Patent does  
11 not include a Carry-Loop.<sup>49</sup> Accordingly, Hydra repeats and incorporates herein by  
12 reference each of its arguments in Section I, arguing that the overall design of the  
13 lid design covered by the 'D551 Patent is dictated by function.<sup>50</sup>

14 In summary, the 'D235 Patent epitomizes functional design, specifically  
15 crafted to serve the needs of users with active lifestyles. This design, encompassing  
16 both bottle and lid, prioritizes functionality over aesthetics, focusing on key  
17 activities like drinking, mixing, pouring, storing, and transporting. The  
18 comprehensive design of the D235 shaker bottle and lid, along with its individual  
19 elements are fundamentally driven by utility rather than decorative aspects. Each

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1 <sup>49</sup> See *supra* Section I.



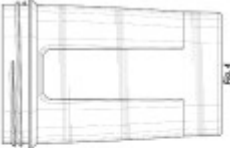
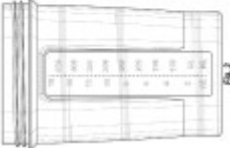
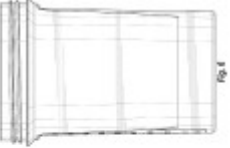
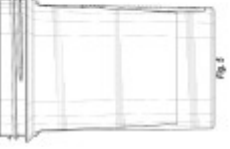
2 <sup>50</sup> See *id.*

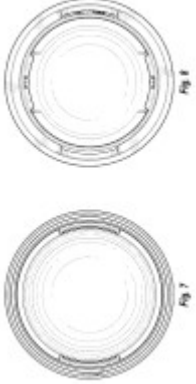
component is thoughtfully designed to maximize practicality and efficiency and collectively underscore a design philosophy where functionality reigns, making the 'D235 Patent's design an exceptionally practical tool. This emphasis on function over ornamentality distinguishes the 'D235 Patent, positioning it as a superior choice in its category, which is not only emphasized in BlenderBottle's marketing but also echoed in customer feedback and existing utility patents. This integration of functional elements not only showcases the functional superiority of the design over alternatives but also transforms the bottle and lid covered by the 'D235 Patent from a mere bottle and lid to an essential tool, affirming the 'D235 Patent's design is dictated by function.

**III. THIS COURT SHOULD ADOPT HYDRA CUP'S PROPOSED CLAIM CONSTRUCTION FOR THE 'D798 PATENT BECAUSE IT FOLLOWS FEDERAL CIRCUIT PRECEDENT.**

**A. Hydra Cup's Proposed Construction of the 'D798 Patent's Claim.**

<b>Claim</b>	<b>Hydra Cup's Proposed Construction</b>
The ornamental design for a container, as shown and described.	<p>The ornamental design for a container, as shown and described, wherein the overall design and each individual design element are claimed as ornamental to the extent they are not dictated by their functional utility and wherein the Claim acknowledges the presence of functional elements primarily dictated by function as follows:</p> <p>(1) the <b>Bottle-Body</b> is primarily designed for drinking, mixing, pouring, storing, and transporting; (2) the <b>Bottle-Screw-Top-Head</b> is functionally designed for securely sealing with a lid</p>

Claim	Hydra Cup's Proposed Construction
     	<p>and facilitating pouring and drinking; (3) the <b>Bottle-Bottom</b> is designed to provide structure, stability and support, as well as to enable the implementation of other functional elements; (4) the <b>Volumetric-Measurement-Tool</b> and its translucent window, located on one side of the Bottle-Body, allow for measuring and viewing the bottle's contents; and (5) the <b>Bottle-Sides</b> on both sides of the Bottle-Body are designed for enhanced grip and handling as well as to enable other functional features.</p> <p>Both the overall design and each individual design element comprising the overall design, being primarily dictated by their functional nature, are not claimed for their ornamental design, and any protection is disclaimed over these designs dictated by function.</p> <p>The Claim further acknowledges a broad array of prior art involving bottle and lid designs with substantial similarities and, therefore, the scope of protection is limited to the unique, non-functional, ornamental aspects that distinguish this design from existing designs in the prior art.</p>

Claim	Hydra Cup's Proposed Construction
	

**B. The Scope of the 'D798 Patent's Claim is Limited by the Functional Elements of the Design and the Functional Purpose of the Design as a Whole.**

***1. The Overall Design of the 'D798 Patent is Dictated by Function.***

The overall design of the 'D798 Patent is fundamentally driven by its functional purpose. Each element of the 'D798 Patent's design for a container is primarily functional, catering to the needs of users requiring a versatile and efficient mixing and storage solution. The container design covered by the 'D798 Patent represents the optimal solution for its intended function. The shape and size of the bottle are tailored to ensure ease of handling, maximum capacity, and efficient storage, while the design of the top of the bottle secures to the bottle's lid to ensure a tight seal, preventing leakage and maintaining the quality of the contents.<sup>51</sup> And the Bottle-Bottom enabling integrated storage compartments are a

<sup>51</sup> See *supra* Arguments, Sections I.B, II.B (discussing the functional benefits of combining a bottle with a shaker bottle lid).



1 key functional aspect of the design, offering users the convenience of carrying  
2 supplements or snacks without the need for additional containers.

3 In the context of storage container shaker bottles, the design alternatives are  
4 significantly limited. There are limited ways to design a cylindrical container bottle  
5 while maintaining its ability to function as drinking, mixing, pouring, storing, and  
6 transporting container. The design in the 'D798 Patent is not just one among many;  
7 it is a design that achieves the highest functionality within the constraints of what  
8 is possible for such products. The combination of a container with capabilities for an  
9 attached lid and attached storage compartments is a unique solution that addresses  
10 specific user needs in a way that other designs fail to match. This means the 'D798  
11 Patent's design is the best available, considering the functional requirements of the  
12 design. Alternative designs would either compromise on the efficiency of the mixing  
13 mechanism, the convenience of the integrated storage, or the overall usability of the  
14 bottle. In terms of achieving a design that perfectly balances these functional  
15 aspects, the 'D235 Patent stands alone.

16 BlenderBottle describes its D798 Patent's design, embodied in its ProStack  
17 storage container shaker bottle, as an "[a]ll-in-one shaker and supplement storage  
18 system," that includes four separate attachable parts: a 20oz shaker bottle; a 150cc  
19 attachable storage container jar; a 100cc attachable storage container jar; and a pill  
20 organizer. (See, e.g., Ex. 4, Screenshot of BlenderBottle's ProStack Shaker Bottle

Product Page.). Thus, the primary new feature offered by its D798 Patent is the designs ability to function as a multi-compartment storage container, offering users the ability to attach multiple storage container jars to the bottom of the bottle.<sup>52</sup>

Given the inherently functional nature of the product and the limited scope for alternative designs that maintain the same level of functionality, the scope of the 'D798 Patent should be viewed as very narrow. The design is dictated by the need to efficiently combine the functions of drinking, mixing, pouring, storing, and transporting in a single, portable container, leaving little room for variations that do not detract from its practical utility. The D798 Patent's design, therefore, while patented as a design patent, is primarily a reflection of its overall functionality and of its elements dictated by function than an exercise in aesthetic creativity.

***2. Each Individual Element in BlenderBottle's 'D798 Patent is Dictated by Function.***

Each design element in BlenderBottle's 'D798 Patent's design for a container bottle is primarily functional.

**a. The Container-Bottle-Body Covered by the 'D798 Patent Represents the Best Design for Optimal Functionality.**

According to BlenderBottle, its container design covered by the 'D798 Patent is a "shaker [container storage bottle] [that] combines a . . . shaker bottle with interlocking storage containers, making it easier than ever to carry nutrition and

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<sup>52</sup> (See, e.g., Ex. Ex. 4, Screenshot of BlenderBottle's ProStack Shaker Bottle Product Page (advertising "House your protein powders, pre-workouts, BCAAs, with two attachable jars. Vitamins? No problem. Use the attachable pill tray housed in the lid of one of the jars.").)

1 supplements on the go.”<sup>53</sup> And the Container-Bottle-Body is a “durable, leak-proof  
2 shaker bottle.” (*See, e.g.*, Ex. 4, Screenshot of BlenderBottle’s ProStack Shaker  
3 Bottle.). BlenderBottle informs its storage container bottle is “[d]ishwasher safe”  
4 and “BPA and phthalate-free.” (*Id.*). Along the same lines, the use of multiple types  
5 of plastic material on the surface of the Container-Bottle-Body, especially the  
6 transition from coarse and opaque to transparent and smooth material for the  
7 Container-Measurement-Markings-Tool, serves a practical purpose. It allows users  
8 to clearly view the container’s contents, especially the volume, which is essential for  
9 a container bottle. And the curved surface forming a cylinder shape is a standard  
10 design for many bottles due to its ergonomic and manufacturing benefits. This  
11 design provides a balanced distribution of weight and is easy to manufacture.

12 **b. The Container-Measurement-Markings-Tool is Primarily Functional.**

13 The design of the Container-Measurement-Markings-Tool covered by the  
14 ’D798 Patent is fundamentally functional and represents the best available design  
15 for its intended purpose. The Container-Measurement-Markings-Tool is a vital  
16 functional feature, adhering to standard measurement practices and providing  
17 clarity on measurements for consumables. Its design, utilizing a transparent  
18 material, is crucial for accurately gauging the contents of the bottle. This  
19 transparency ensures users have a clear, unobstructed view of the measurements,  
20 which is essential for precise portion control and supplement management.

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1 <sup>53</sup> (*See, e.g.*, Ex. 4, Screenshot of BlenderBottle’s ProStack Shaker Bottle Product Page.).

1 Furthermore, the placement of measurement markings on the outside of the  
2 container, as opposed to the inside, is a superior design choice. This positioning  
3 avoids contact with the bottle's contents, preventing any potential wear or erosion of  
4 the markings over time, thus ensuring long-term visibility and accuracy. And  
5 external markings are easier to read, especially when the bottle is filled or in use.  
6 And the elongated, translucent window, coupled with the depressions on the  
7 container's sides, is not just for measurement clarity but also adds an ergonomic  
8 benefit. The design of the depressions, particularly on the right side where the  
9 Container-Measurement-Markings-Tool is housed, aids in clarity and ease of  
10 measurement. On the left side, the depression provides a functional grip, enhancing  
11 the container's usability, especially when hands are wet or full.

12 In conclusion, the 'D798 Patent's design for the Container-Measurement-  
13 Markings-Tool is the most effective and practical design when compared to  
14 alternative options. It provides clear, accurate, and durable measurement  
15 markings, enhances the container's ergonomic use, and prioritizes functionality  
16 over decorative aspects, making it the best available design for its intended  
17 purpose.

18 **IV. DOZENS OF UTILITY PATENTS DESCRIBE THE FUNCTIONALITY OF THE**  
19 **DESIGNS CLAIMED BY THE ASSERTED PATENTS.**

20 Numerous utility patents dating back over forty years further elaborate on  
21 the usefulness and functionality of the lid and bottle designs claimed by the

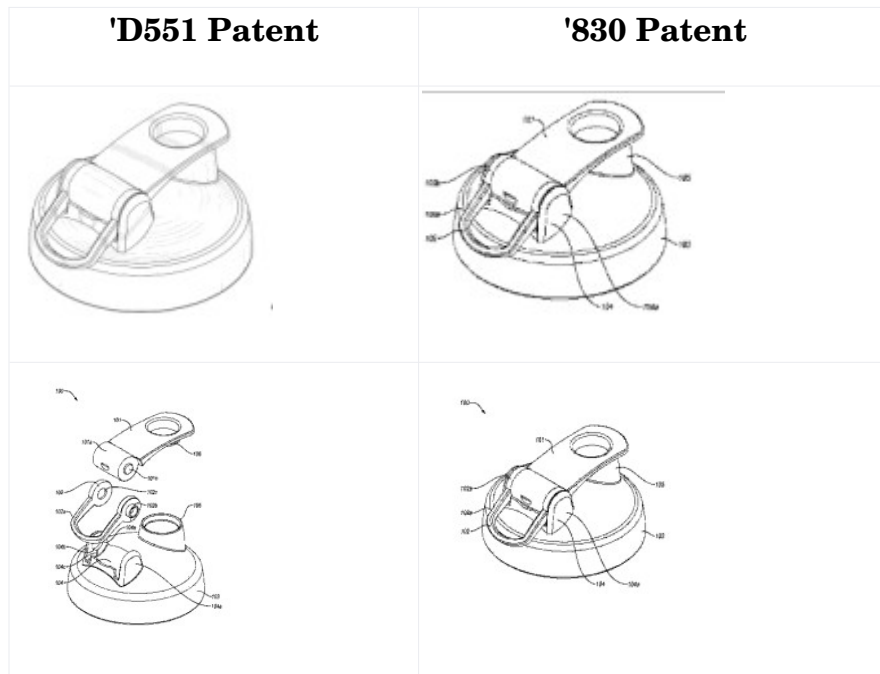
1 Asserted Patents, highlighting the functional nature of each Asserted Patent's  
2 claimed design and further demonstrating that each of the Asserted Patent's  
3 claimed design is entirely dictated by function.

4 The following utility patents all describe the functionality of designs similar  
5 to those claimed by the Asserted Patents: U.S. Patent No. 8,695,830 (filed on 2012-  
6 09-11, issued on 2014-04-15); U.S. Patent No. 3,820,692 (issued on 1974-06-28); U.S.  
7 Patent No. 5,499,736 (issued on 1996-03-19); U.S. Patent No. 2,754,866 (issued on  
8 1956-07-17); U.S. Patent No. 7,533,783 (filed 2005-12-20); U.S. Patent No. 8,464,895  
9 (filed 2011-06-27); U.S. Patent No. 8,985,370 (filed 2013-12-09 with a priority date  
10 of 2012-05-30)

11 **The '830 Describes the Functional Utility Dictating the Flip-Top-Cap,**  
12 **Brackets, Carry-Loop, and Spout and Spout-Guard Designs.**

13 BlenderBottle filed a utility patent for the exact same lid design covered by  
14 the 'D551 Patent, the day before BlenderBottle filed its D551 Patent, describing the  
15 'D551 Patent's utility and demonstrating how the design is primarily dictated by  
16 function. *See* '830 Patent.

17 .



1           BlenderBottle's '830 Patent provides a detailed description of both the overall  
 2   functionality of the 'D551 Patent's lid design as well a detailed description for each  
 3   individual functional element comprising the 'D551 Patent's lid design. For  
 4   example, BlenderBottle of the lid design covered by the 551 Patent as follows: "In  
 5   this manner, flip top 101 and handle 102 are securely attached to the lid while  
 6   enabling flip top 101 and handle 102 : to remain independently pivotable. For  
 7   example, while flip top 101 remains inserted into spout 105, handle 102 can be  
 8   freely pivoted around the axis of mount 104. Similarly, flip top 101 can be pivoted  
 9   around the axis of mount 104 without pivoting handle 102." *See* '830 Patent, 9-10,  
 10   Claims 3-4.

The '830 Patent also describes the functionality of the Brackets design, “allowing” the Flip-Top-Cap and Carry-Loop to “independently pivot.” *Id.* at 9-10, Claims 3-4.

“Flip top 101 includes a flip top pivot 101a having a protrusion 1014 on each side. As shown in FIGS. 1, 2, 4 and 5, flip top pivot 101a may comprise an at least substantially solid or continuous body and protrusions 1015 may extend outwardly from each side or end of the body. Handle 102 includes a loop 102a and a handle pivot 1024 on each side. Flip top 101 and handle 102 are mounted within mount 104 such that flip top 101 and handle 102 can each independently pivot. Although the Figures illustrate a handle having a round loop, loops of other shapes could also be used. Further, handle 102 can also be formed in a shape other than a loop as long as the handle includes handle pivots 1024 on both sides (e.g., a hook, a clip, etc.).”

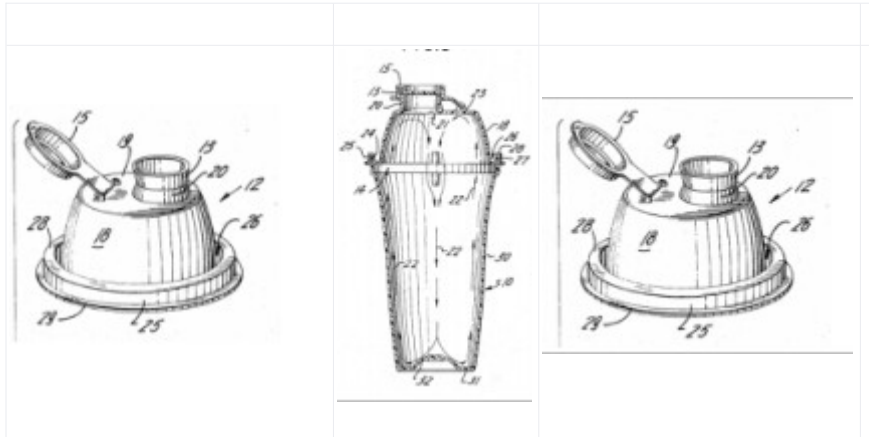
*Id.* at 9-10, Claims 3-4.

“A container lid for sealing an opening to a container may include a handle and a flip top that are each independently pivotable along the same axis. The handle can be secured to the container lid between a mount on the lid and the flip top. The handle supports the weight of the container and, because the handle is independently rotatable relative to the flip top, the handle will not inadvertently open the flip top.” *Id.* at 1, Abstract.

**The '692 Patent Describes the Functional Utility Dictating the lid's Domed-Body, Flip-Top-Cap, Brackets, the Carry-Loop Design, and the Spout and Spout-Guard Design.**

The '692 Patent discloses a lid design substantially similar to the lid design covered by the 'D551 Patent and describes its functional utility. *See* '692 Patent.

1



2 Id., figs. 1-3. The '692 Patent describes the multifunctional nature of the domed-  
 3 body shaker bottle lid design. *See id.* It serves four primary purposes: as a  
 4 removable, seal-tight closure for the container; as a means to increase the  
 5 container's capacity; as an auxiliary opening for adding ingredients and a spout for  
 6 dispensing; and finally, to keep the blending element in a stable position within the  
 7 assembly. *Id.* at 1:64-2:7. The 692 Patent also elaborates on the functional aspects  
 8 of a domed-body lid design, describing how the dome-body lid design formed by the  
 9 inwardly curving side wall leading to the top wall is primarily functional, as the  
 10 dome shape, in conjunction with the container's unique design, creates a fluid flow  
 11 pattern that moves the liquid from the sides towards the center, enhancing  
 12 agitation and mixing efficiency. *See id.* Additionally, the 692 Patent details the  
 13 design of the vessel's bottom wall, which includes a centrally located, internally  
 14 projecting hemispherical portion. *Id.* This design element works in contrast to the  
 15 flow pattern created by the top, directing fluids from the center of the vessel

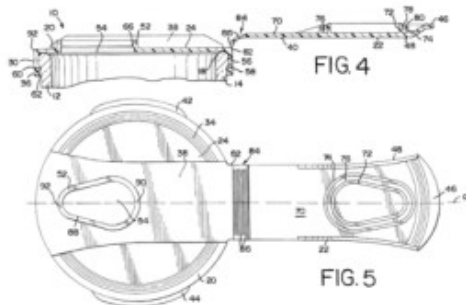
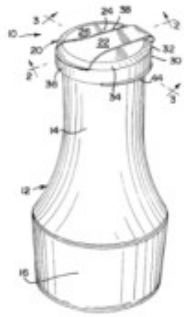


1 towards the side walls. When the container is shaken, this design creates a  
2 comprehensive fluid flow pattern, as illustrated in FIG. 5, ensuring thorough mixing  
3 by exposing the fluid to various eddy flow patterns across different areas of the  
4 blending element. *Id.*

5 In describing this hinged cap, the 692 Patent described the functionality of  
6 the cap: “The seal for the spout or neck 20 as shown in FIG 1. cooperates with the  
7 flared peripheral spout 13 and is comprised of a conventional cap-like member 15  
8 suitably removably attached to closure top wall 19, as by hinge pivots 23.” *Id.* at  
9 2:31-36.

10 **The '736 Patent Describes the Functional Utility Dictating the Flip-Top-**  
11 **Cap, Brackets, Carry-Loop, Spout, and Spout-Guard Designs.**

12 The '736 Patent discloses a design substantially similar to the Flip-Top-Cap  
13 design on the lid covered by the 'D551 Patent and describes its functional utility.  
14 *See* '736 Patent.



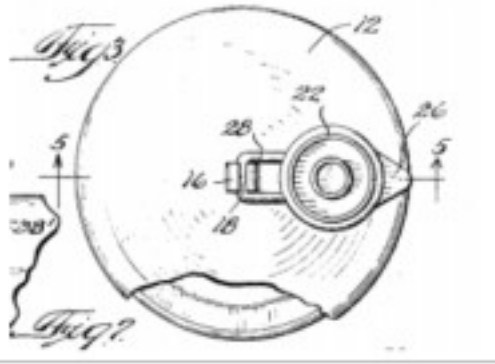
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2 *Id.*, figs 2, 4-5.

3 More specifically, the '736 Patent describes the functional utility of the flip-  
 4 top-cap design as follows: a "new and improved cap member 10 includes means for  
 5 forming a releasable cover seal for the pouring orifice 54. As depicted in the  
 6 drawings the pouring orifice is defined by a raised projecting latch lip 52 extending  
 7 upwardly within the central recess 38. Latch lip 52 includes a latch shoulder 66  
 8 defined along the inwardly-facing side thereof. The free end 48 on strap 22 is  
 9 provided with cooperating snaplock orifice sealing structures 72 and 74 extending  
 10 from an underside surface 70 of strap 22." *Id.* at 5:48-57, figs. 1, 4-5.

**The '866 Describes the Functional Utility Dictating the Flip-Top-Cap, Bottle-Body, Bottle-Lid, Spout, and Spout-Guard Designs.**

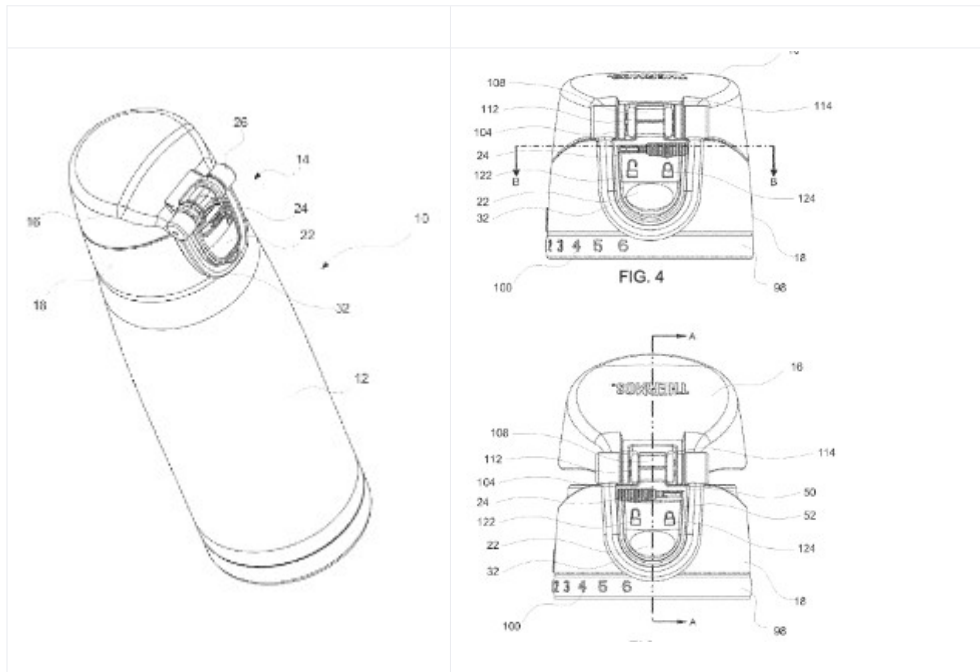
The '866 Patent also discloses Flip-Top-Cap, Bottle-Body, Bottle-Lid, Carry-Loop, Spout and Spout-Guard designs just like that of the designs covered in the 'D551 Patent and describes the functionality of such a design. *See* '866 Patent.



*See id.* at fig. 3. The '866 Patent explains that “in normal use of the container 10 it is found desirable to merely pivot the cap 22 about the hinge 16, thus exposing the aperture in the cover 12 for easy removal of the container’s contents.” *Id.* at 2:52-59. The 866 Patent further describes the benefits and functionality provided by having multiple sized access ports for a lid, made possible by a flip-top-cap design, noting “[b]y such an arrangement filling of the container is facilitated by removing the large cover from its sealed engagement with the container, [w]hile pouring is greatly facilitated by removal of the smaller cap from the aperture in said cover.” *Id.*

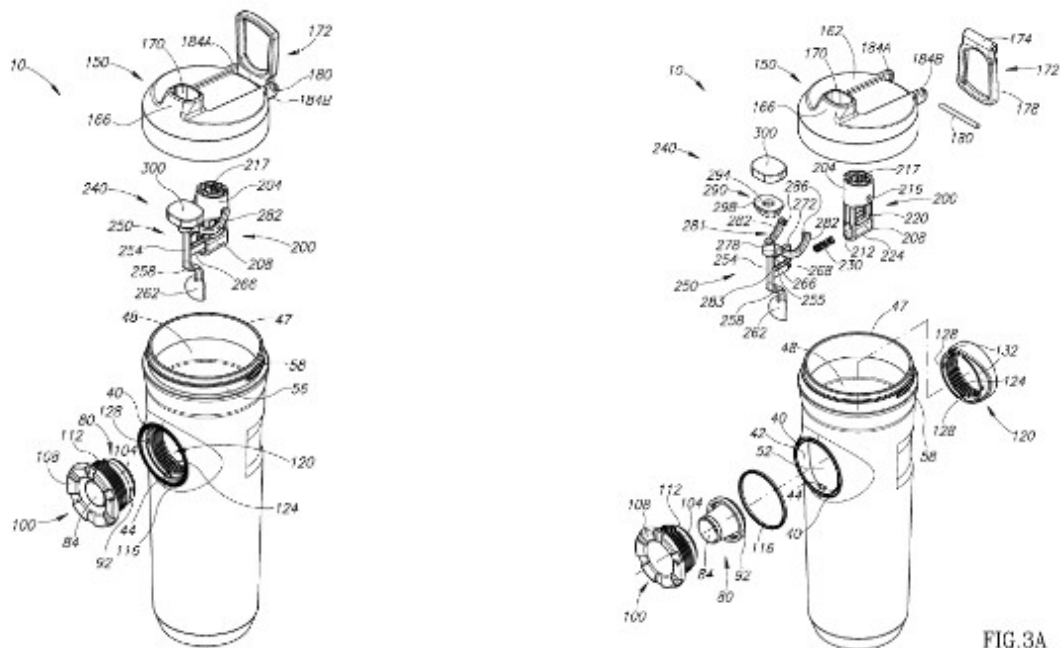
**The '370 Patent Describes the Functional Utility Dictating the Brackets and Carry-Loop.**

The '370 Patent describes a functional hinged cap similar to the 'D551 Patent's Flip-Top Cap as follows: "A handle 32 may be attached to the inner lid 18 and/or the outer lid 16 to provide a convenient method of carrying the bottle 10 or attaching the bottle 10 to a backpack, gym bag or the like. In one embodiment, the handle 32 is attached about the outer ends of the hinge 26, thus permitting the handle 32 to be a hinged handle. The handle 32 and outer lid 16 share the hinge 26 so that only one hinge pin need be provided for both elements." *See* '370 Patent, 11:5-6.



**The '895 Patent Describes the Functional Utility Dictating the Carry-Loop Design.**

The '895 Patent discloses a Carry-Loop design similar to the Carry-Loop design claimed by the Asserted Patents and describes how the Carry-Loop design is dictated by function. See '895 Patent.



More specifically, the '895 Patent describes such functionality as follows:

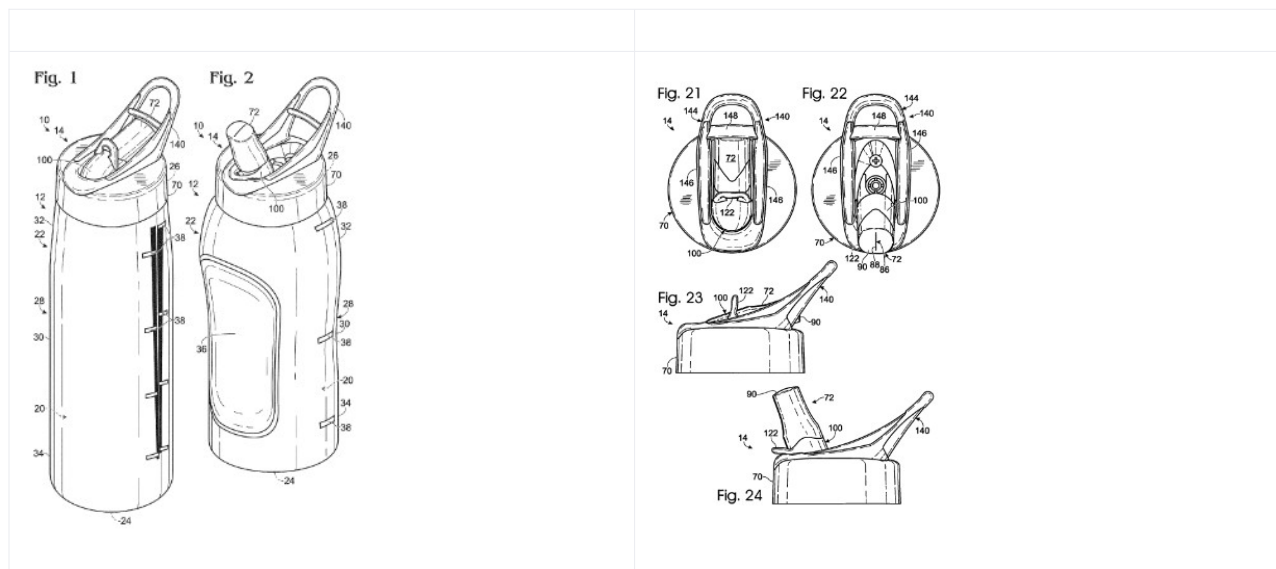
As may best be viewed in FIG, 3A, the upper portion 162 further includes first and second hinge pin mounts 184A and 184B, respectively, that are configured to mount a finger loop to allow a user to easily carry the assembly 10. The finger loop 172 includes a hinge pin sleeve 174, in which a hinge pin 180 is positioned, and a loop portion 178. The hinge pin 180 is coupled to the hinge pin mounts 184A and 184B such that the finger loop 172 is removably or fixedly secured to the lid 150. The finger loop 172 may be operative to rotate about the hinge pin 180 between a downward extending position shown in FIG. 1 to an upward extending position shown in FIG. 2. In other embodiments, the finger loop 172 may be operative to rotate over

a larger or smaller range of angles (e.g., 90 degrees, 270 degrees, or the like). In operation, a user may carry the assembly 10 by inserting a finger or other object (e.g., a belt, a strap, or the like) into the loop portion 178 of the finger loop 172.

*See id.* at 10, 2, Detailed Description of the Invention.

**The '783 Patent Describes the Functional Utility Dictating the Carry-Loop, and Spout and Spout-Guard Designs.**

The '783 Patent discloses a Carry-Loop design similar to the Carry-Loop design claimed by the Asserted Patents and describes how the Carry-Loop design is dictated by function. *See* '783 Patent.



More specifically, the '783 Patent describes such functionality as follows:

When present, handle 140 may, but is not required to, define a closed perimeter, or boundary, 142 through which a lanyard, karabineer, belt, strap, user's finger, or other structure may extend to hold and/or retain the drink bottle in a selected position. It is within the scope of the present disclosure that this closed boundary is perhaps best seen in FIG. 25. The closed boundary may be defined entirely by the handle or that it may be defined by the handle and the base of the cap assembly.

1        Regardless, the closed boundary refers to a closed perimeter around an  
2        opening through which an object may be inserted, such as to position  
3        or coupled to the drink container. Additionally or alternatively, when  
4        the drink bottle includes a tether than interconnects the cap assembly  
5        and the fluid container, the tether may also define (when the cap  
6        assembly is properly mounted on the fluid container) a (or another)  
7        closed boundary through which a strap or other securing or positioning  
8        structure may extend.

9        *See id.*, Claim 16.

10    **V.     THE SCOPE OF THE ASSERTED PATENTS' CLAIMS IS LIMITED BY DESIGN**  
11    **PATENT PRIOR ART.**

12        In the case at hand, the designs for the shaker bottles and lids claimed by the  
13    Asserted Patents are not new or original. In construing the claims of the Asserted  
14    Patents, the Court should consider the numerous prior art references cited by the  
15    examiner on the face of the Asserted Patents, as well as the additional references  
16    identified by Hydra Cup below.

17    **A. Design Patent Prior Art Narrowing the Scope of the Asserted Patents.**

18        The following are examples of prior art references that are substantially  
19    similar to the designs for lids, shaker bottles, and container claimed by the Asserted  
20    Patents along with the prior art referenced in the Assert Patents, necessitate an  
21    extremely narrow construction.







1

2 **B. The Accused Products Were Designed Based on Similar Designs**  
3 **Disclosed by Other Patents and Therefore the Asserted Patents' Claims**  
4 **Should be Narrowly Construed in the Context of the Prior Art and**  
5 **Infringement Allegations.**

6 ***1. The Accused Products Were Designed Based on the D029 and D047***  
7 ***Patents.***

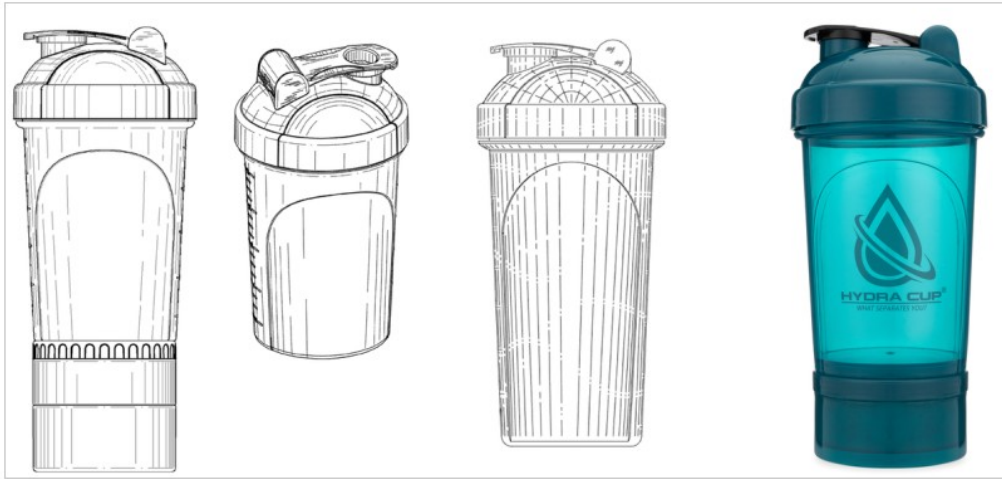
8 The Accused Products were designed and modeled after the shaker bottle  
9 designs in the 'D047 Patent the 'D029 Patent. *See* U.S. Patent No. D666,047 (filed  
10 2011-04-14); U.S. Patent No. D766,029 (filed 2015-07-15). The D047 Patent  
11 references BlenderBottle's D551 Patent as prior art; and the 'D029 Patent  
12 references BlenderBottle's D798 Patent as prior art. Thus, the USPTO has already  
13 determined that the designs are different enough to warrant granting separate and  
14 distinct patents and Hydra Cup's products therefore cannot infringe.

15 **D029 Patent, D047 Patent, and Hydra Cup's Accused Products.**

*Artwork from patent 029D*

*Artwork from patent 047D*

*Hydra Cup Accused Product*



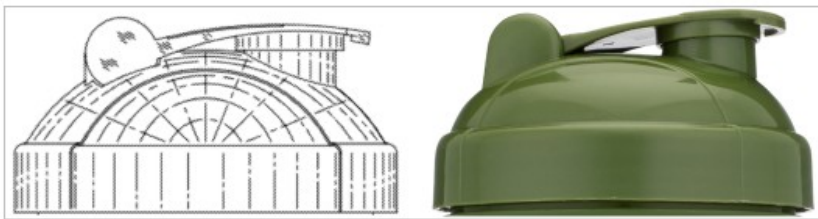
1

2 **D047 Patent Bottle and Lid Design Next to Hydra Cup's Accused Products**



3

4 **D047 Patent Bottle and Lid Design Next to Hydra Cup's Accused Products**



**a. The Accused Products Modeled After the 'D047 Patent Do Not Infringe the 'D551 Patent.**

The majority of the Accused Products are modeled after the 'D047 Patent. (See Ex. 6, Hydra Cup's 'D047 Patent License Agreement with Zhigang.).

BlenderBottle's 'D551 and 'D798 Patents cite the 'D047 and 'D235 Patents as prior art. See 'D551 Patent, References Cited; 'D798 Patent, References Cited. Hydra Cup's Accused Products accused of infringing the 'D551 and 'D235 Patents were modeled after the bottle and lid design disclosed by the 'D047 Patent, not the 'D551 and 'D235 Patents. (See *id.*). And the 'D551 Patent was granted by the USPTO with the 'D047 and D235 Patents cited as prior art. See *id.* This means the USPTO Examining Agent recognized significant differences between the 'D047 Patent and BlenderBottle's 'D235 and 'D551 Patents. Therefore, because Hydra Cup's Accused Products are designed after the design covered by the 'D047 Patent, not the Asserted Patents, and because the USPTO has already determined that the 'D047 Patent sufficiently differs from the Asserted Patents, it follows that the Accused Products modeled after the 'D047 Patent would inherently also differ from the Asserted Patents. The fact that the 'D551 Patent was granted in light of the 'D047 Patent being cited as prior art demonstrates that the USPTO recognized a unique

1 and non-obvious design in the 'D047 Patent. The substantial similarity between the  
2 Accused products and the 'D047 Patent they were designed after suggests that any  
3 resemblance to the 'D551 Patent is coincidental or superficial and does not  
4 constitute infringement.

5 The Accused Products resembling the design covered by the 'D047 Patent are  
6 leveraging a legally distinct design space. The scope of the Asserted Patents are  
7 extremely narrow. Given the USPTO's distinction between the design covered by  
8 the 'D047 Patent and the designs covered by the 'D551 Patent and the narrow  
9 constraints on the reach of the 'D551 Patent, BlenderBottle must face a significant  
10 challenge in proving direct infringement by the Accused Products designed after the  
11 'D047 Patent. The USPTO's approval of the 'D551 Patent, considering the 'D047  
12 Patent cited as prior art, serves as a strong indication of the distinctiveness of the  
13 'D047 design. Consequently, products modeled after the 'D047 Patent, such as  
14 Hydra Cup's Accused Products, should not be considered infringing on the 'D551  
15 Patent; therefore, the 'D551 Patent's claim should be construed accordingly narrow.

16 **b. The Accused Products Modeled After the 'D029 Patent Do Not Infringe**  
17 **BlenderBottle's 'D798 Patent.**

18 Similarly, Hydra Cup's Accused Products are also designed based on the  
19 design in U.S. Patent No. D766,029 (filed 2015-07-22). The D029 Patent cites the  
20 D047 and D235 Patents as prior art. *See* D029 Patent, References Cited.

1 Comparing the 'D029 Patent and the 'D798 Patent reveals significant  
2 differences in their ornamental aspects. The 'D029 design, distinct in its aesthetic  
3 elements, does not infringe upon the ornamental aspects of the 'D798 Patent.  
4 Therefore, products modeled after the D029 design, including the Accused Products,  
5 should not be considered infringing. And the Asserted Patents should be construed  
6 narrowly to reflect such limitations on the scope of their claims.

7 **C. The Accused Products are More Substantially Similar to Designs**  
8 **Disclosed by Other Patents that Cited the Asserted Patents as Prior Art.**

9 The Accused Products are more closely aligned with the designs of other  
10 recently granted patents that cited the Asserted Patents as prior art. This means  
11 the USPTO specifically determined that such new designs are sufficiently distinct  
12 from those in the Asserted Patents.

13 **a. The Accused Products are More Substantially Similar to the 'D107**  
14 **Patent than to the Asserted Patents.**

15 The Accused Products are more similar to the 'D107 Patent. *See* U.S. Patent  
16 No. D1,003,107 (filed 2023-02-24).



1  
2  
3 The 'D107 Patent cites BlenderBottle's 'D235 and 'D551 Patents as prior art. *See id.*  
4 at References Cited. Thus, because Hydra Cup's Accused Products are more similar  
5 in overall design to the 'D107 Patent and because the D107 was deemed to not  
6 infringe upon BlenderBottle's D235 or 'D551 Patents, Hydra Cup's Accused  
7 Products that are substantially similar to its 'D107 Product are therefore also not  
8 accusing BlenderBottle's 'D235 or 'D551 Patents. Thus, the claims of the 'D235 and  
9 'D551 should be narrowly construed to reflect such a narrow scope of protection.

10 Hydra Cup's Accused Products closely resemble the design in Hydra Cup's  
11 D107 Patent, not the designs in BlenderBottle's D235 and D551 Patents. This  
12 resemblance is crucial because it suggests that any similarities between the  
13 Accused Products and BlenderBottle's patents are coincidental or insufficient to  
14 constitute infringement. Significantly, the 'D107 Patent was granted after citing  
15 BlenderBottle's D235 and D551 Patents as prior art. The USPTO's approval of the  
16 'D107 Patent, in light of these citations, indicates that the examining agent found  
17 Hydra Cup's design in the 'D107 Patent to be substantially different from the  
18 designs in BlenderBottle's 'D235 and 'D551 Patents. This differentiation by the  
19 USPTO is a strong indicator of the uniqueness and non-infringing nature of the  
20 'D107 Patent's design. The decision by the USPTO to grant Hydra Cup's 'D107  
21 Patent, despite the consideration of BlenderBottle's patents as prior art, implies

1 that the designs covered by Hydra Cup's patent do not infringe upon the designs of  
2 BlenderBottle's patents. If the USPTO had found substantial similarities that  
3 would constitute infringement, it would not have granted Hydra Cup's patent.

4 Patent law operates on the principle that each patent is unique and non-  
5 obvious over existing prior art. The granting of Hydra Cup's D107 Patent, with  
6 BlenderBottle's patents as cited prior art, underlines this principle, suggesting that  
7 the designs are legally distinct. Considering the USPTO's recognition of the  
8 distinctiveness of Hydra Cup's 'D107 Patent, BlenderBottle faces a considerable  
9 challenge in proving that Hydra Cup's Accused Products, which are similar to the  
10 D107 design, infringe upon their 'D235 or 'D551 Patents. The close resemblance of  
11 Hydra Cup's Accused Products to its 'D107 Patent, rather than BlenderBottle's  
12 patents, will be a key factor in the infringement analysis. This resemblance  
13 indicates that the Accused Products are operating within the design scope legally  
14 established and protected by Hydra Cup's 'D107 Patent.

15 The approval of the 'D107 Patent in the context of BlenderBottle's 'D235 and  
16 'D551 Patents being cited as prior art, strongly suggests that Hydra Cup's Accused  
17 Products that are more substantially similar to the 'D107 Patent compared to the  
18 Asserted Patents represents a distinct, non-infringing design. Consequently, the  
19 claims of the 'D235 and 'D551 Patent should be narrowly construed to acknowledge

1 the Accused Products are more substantially similar to other patents that reference  
2 the Asserted Patents as prior art.

3 **b. The Accused Products that are More Substantially Similar to the 'D348**  
4 **Patent than to the Asserted Patents are Not Infringing the Asserted**  
5 **Patents.**

6 The lid designs on the Accused Products are more similar to the lid designs  
7 disclosed by the 'D348 Patent than to BlenderBottle's Asserted Patents. *See* U.S.  
8 Patent No. D992,348 (filed 2023-02-03). The 'D348 Patent cites BlenderBottle's  
9 'D235 and 'D551 Patents as prior art as well as the 'D029 Patent. *See id.* at  
10 References Cited. Thus, because the Accused Products are more similar in overall  
11 design to the 'D348 Patent and because the 'D348 was deemed to not infringe upon  
12 BlenderBottle's 'D235 or 'D551 Patents, the Accused Products that are substantially  
13 similar to the 'D348 Patent are therefore also not infringing BlenderBottle's 'D235  
14 or 'D551 Patents. Thus, the closer alignment of the Accused Products' lid design  
15 with the lid design covered by D348 Patent, rather than the lid designs covered by  
16 BlenderBottle's 'D235 and 'D551 Patents, further narrows the scope of the lid  
17 design covered by the 'D235 and 'D551 Patents' claim.

18 **CONCLUSION**

19 The design elements of the Asserted Patents are primarily dictated by  
20 function and were available to consumers well before BlenderBottle filed its patent  
21 applications. Examining the overall functional nature of each Asserted Patent as



1 well as the functional nature of each design element, shows how each functional  
2 element combines and integrates with the other functional elements to form designs  
3 for shaker bottles and lids that are fundamentally utilitarian in nature.

4 BlenderBottle's attempt to broadly claim infringement overlooks the functional  
5 design considerations and prior art that underpin the basic design of its products,  
6 using design patents to unjustly thwart competition. Accordingly, Hydra Cup's  
7 proposed constructions aim to limit the scope of these patents to non-functional  
8 features and those not claimed by prior art, in alignment with the principles of  
9 patent public policy and the fundamental goal of claim interpretation in design  
10 patents. For the reasons discussed above, Defendant Hydra Cup request that the  
11 Court adopt its proposed constructions of the disputed claims of the Asserted  
12 Patents.

13 **Dated:** 30 November 2023

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by email on 30

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**EXHIBITS**

Exhibit 1, Declaration of Casey Scott McKay

Exhibit 3, BlenderBottle's Objections and Responses To Hydra Cups Interrogatories

Exhibit 4, Screenshot BlenderBottle ProtStak Container Bottle Product Page

Exhibit 5, Third Party Reviews of BlenderBottle Classic and ProStack

Exhibit 6, Hydra Cup's D047 Patent License Agreement with Zhigang

Exhibit 7, Screenshot of BlenderBottle Touting Effective Results of Mixing System (04 May 2012), *available at*

<https://web.archive.org/web/20130504060128/http://blenderbottleshaker.blogspot.com/>

Exhibit 8, Larson AJ, Haver S, Hattendorf J, Salmon-Mulanovich G, Riveros M, Verastegui H, Mäusezahl D, Hartinger SM. Household-level risk factors for water contamination and antimicrobial resistance in drinking water among households with children under 5 in rural San Marcos, Cajamarca, Peru. *One Health*. 2023 Jan 3;16:100482. doi: 10.1016/j.onehlt.2023.100482. PMID: 36655146; PMCID: PMC9841353

Exhibit 9, Screenshot of BlenderBottle Classic Product Page (last visited 22 November 2023), *available at* <https://www.blenderbottle.com/products/classic>

Exhibit 10, Screenshot of BlenderBottle Touting Many Uses (March 2012)

Exhibit 13, Packaging Styles---Bottle Caps, *available at*

<https://www.liquidpackagingsolution.com/news/packaging-styles---bottle-caps> (last visited 03 November 2023).

Exhibit 14, Plastic bottles market---Growth, trends, Covid-19 impact, and forecasts (2021—2026), *available at*

<https://www.mordorintelligence.com/industry-reports/plastic-bottles-market> (last visited on 28 October 2023)

Exhibit 15, Simone Sohnle, Myriam Braun-Münker, Felix Ecker, Fulda, A comparative study of various screw caps, *Science & Research*, (2016), *available at* [https://www.ernaehrungs-umschau.de/fileadmin/Ernaehrungs-Umschau/pdfs/pdf\\_2016/09\\_16/EU09\\_2016\\_WuF\\_Braun-Muenker\\_en.pdf](https://www.ernaehrungs-umschau.de/fileadmin/Ernaehrungs-Umschau/pdfs/pdf_2016/09_16/EU09_2016_WuF_Braun-Muenker_en.pdf).

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- 4 Exhibit 17, Ana Jovčevska, Leo Krlevski, Ili Mirčeski, Design and Improvement of  
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7 <https://doi.org/10.55302/MESJ22401647023j>
- 8 Exhibit 18, Kandikjan, T., Mircheski, I. (2020): Design with Plastics, Published by  
9 Faculty of Mechanical Engineering in Skopje
- 10 Exhibit 19, Toscano, R. A., Herazo, J., Millan, R. R., Palma, H., Martinez, J.,  
11 Approach methodology for the sustainable design of packaging through  
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13 *Engineering*, Vol. 16, pp. 1-11 (2019), *available at*  
14 <https://doi.org/10.1016/j.csite.2019.100561>.
- 15 Exhibit 20, Lovett, J., Engineering Design of a Disposable Water Bottle for an  
16 Australian Market, *available at* [https://eprints.usq.edu.au/24673/1/Lovett\\_](https://eprints.usq.edu.au/24673/1/Lovett_%202013.pdf)  
17 [%202013.pdf](https://eprints.usq.edu.au/24673/1/Lovett_%202013.pdf) and [https://www.semanticscholar.org/paper/Engineering-design-of-a-](https://www.semanticscholar.org/paper/Engineering-design-of-a-disposable-water-bottle-for-Lovett/e3a1118339d0621eac044ec678b44359b6158369)  
18 [disposable-water-bottle-for-Lovett/e3a1118339d0621eac044ec678b44359b6158369](https://www.semanticscholar.org/paper/Engineering-design-of-a-disposable-water-bottle-for-Lovett/e3a1118339d0621eac044ec678b44359b6158369)  
19 (last visited on 15 November 2023) (2013)